

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-4257

United States Court of Appeals

FOR THE SECOND CIRCUIT

ESTATE OF HERMAN KLEIN, DECEASED, and
BEBE KLEIN, MALCOLM B. KLEIN and IRA K.
KLEIN, EXECUTORS, and BEBE KLEIN, Individu-
ally,

Appellants,

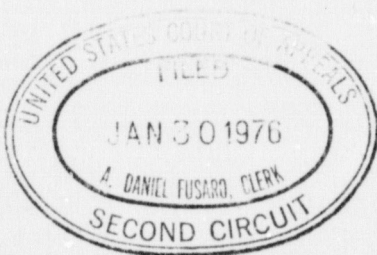
v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

On Appeal from a Decision of the
United States Tax Court

APPENDIX

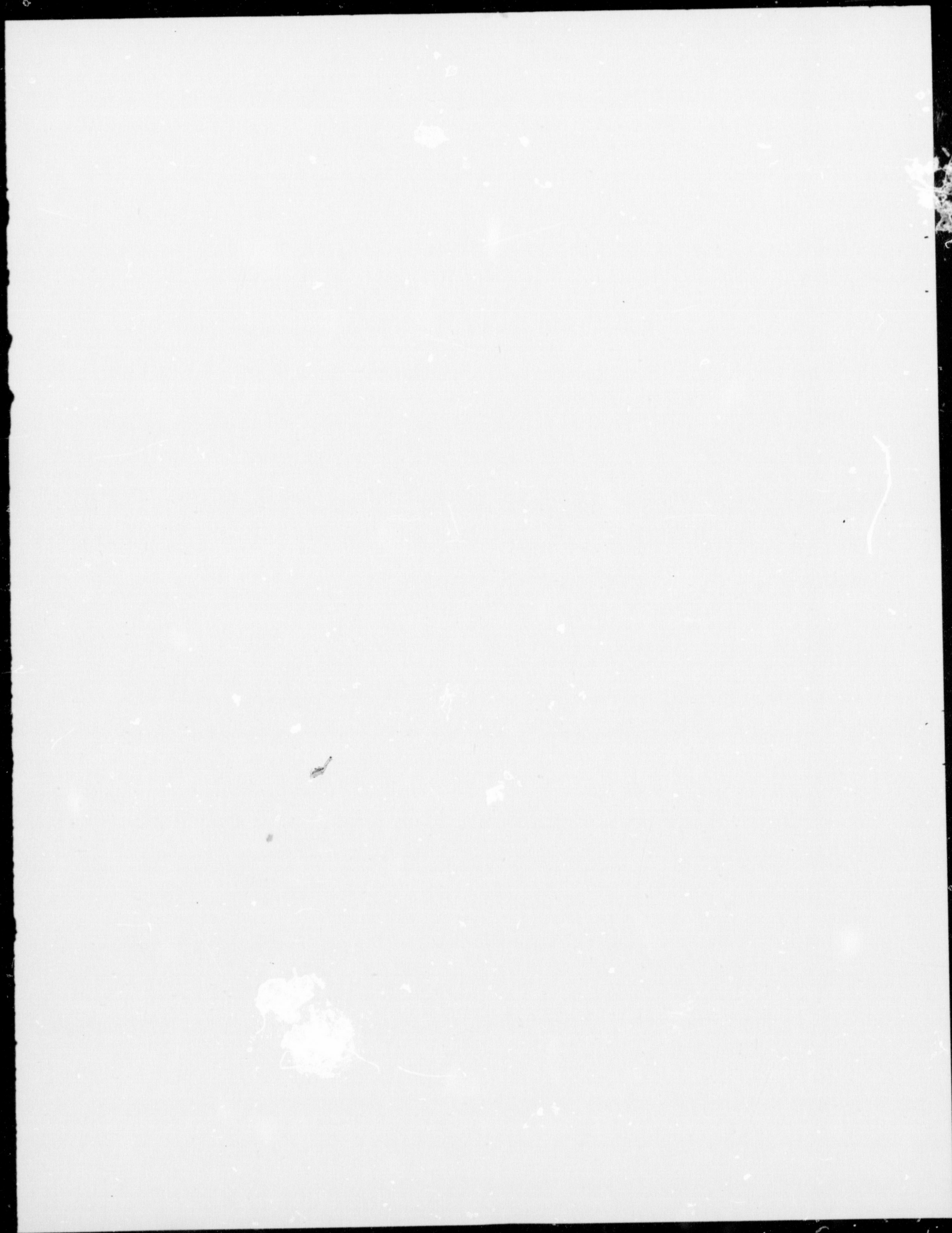


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TAX COURT OF THE UNITED STATES

GENERAL DOCKET

DOCKET NO. 2202-66

CLASS _____

ESTATE OF HERMAN KLEIN, deceased, BEBE KLEIN
MALCOLM KLEIN, and IRA KLEIN, EXECUTORS, and
BEBE KLEIN, SURVIVING WIFE
Respective addresses: 201 East 83rd Street, New
York, N.Y.; 107 Jackson Place, Paramus, New
Jersey; 31 Dorchester Street, Hun- PETITIONER,
tington Station, N. Y.

APPEARANCES FOR PETITIONER:

James E. Birdsell, Warner & Birdsell, 11
Broadway, New York, N.Y. 10004, Dec 11
NAME Henry Mayer and Paul M. Levinson, App 5/14/71
ADDRESS Mayer, Weiner & Mayer: 19 West 14 Street
New York, N.Y. 10036

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

| Date | | Filings and Proceedings | Action | Served |
|-----------|----------|---|-------------------|---------------|
| Month | Day Year | | | |
| May 5, | 1966 | PETITION FILED: FEE PAID May 5, 1966 | | May 6, 1966 |
| July 5, | 1966 | REQUEST filed by Resp. for trial at New York, N.Y. | GRANTED 7/8/66 | July 11, 1966 |
| July 5, | 1966 | ANSWER filed by Resp. | | JUL 11 1966 |
| Aug. 10, | 1966 | REPLY filed by petitioner. | | AUG 15 1966 |
| Oct. 6, | 1969 | NOTICE FOR REPORT UPON TRIAL on Jan. 5, 1970, at New York, New York | | Oct. 6, 1969 |
| Jan. 5, | 1970 | HRG. at New York, N.Y. before Judge Dawson, Jr. Respondent's oral motion for Continuance -- Granted. (All docket Nos.) | | |
| Jan. 5, | 1970 | ORDERED cases continued for further report as to status for trial or settlement April 20, 1970 New York, New York. | | Jan. 29, 1970 |
| Jan. 20, | 1970 | TRANSCRIPT of Hearing of Jan. 5, 1970, received. | | |
| Apr. 6, | 1970 | NOTICE OF TRIAL on June 29, 1970, at New York, N. Y. | | Apr. 6, 1970 |
| April 20, | 1970 | HEARING at New York, N. Y. before Judge Quealy. Continued Generally. See Order dated April 24, 1970. | | |
| April 24, | 1970 | ORDER, that Court's oral direction of April 20, 1970 is vacated and case is stricken from June 29, 1970 calen- dar at New York, N.Y. and continued generally; and further | | May 11, 1970 |

Form No. 34
March 1957

(Continued to Page 2)

TAX COURT OF THE UNITED STATES

GENERAL DOCKET

DOCKET NO. 2202-66

(Continuation)

| EST. OF HERMAN KLEIN, DEC'D., Etc. | | | PETITIONER | PAGE 2 |
|--|--|--------|------------|---------------|
| Date | Filings and Proceedings | Action | Served | |
| Month Day Year | | | | |
| Order dated April 24, 1970 (continued) | ORDER, that parties are to submit a written report on or before July 1, 1970 re calendaring for trial during the Fall 1970 term. | | | |
| May 11, 1970 | TRANSCRIPT of Hearing of Apr. 20, 1970, received. | | | |
| July 1, 1970 | RESP. REPORT as to status of case filed. | | | Aug. 7, 1970 |
| August 4, 1970 | MOTION by Petr. to strike parts of the answer. | | | |
| Aug. 13, 1970 | NOTICE of Filing Petr. motion to strike, and Hearing on Sept. 21, 1970 at New York, N. Y. | | | |
| Sept. 21, 1970 | HEARING at New York, N.Y. before Judge Quealy | | | |
| | Hearing on (2) Motions: 1. Petr's motion filed Aug. 4, 1970 in Dkt. 2202-66 to strike from Resp's Answer, Para. 10. and Pars. 11(a)(b)(c)(d)(e)(f) and(g) Denied | | | |
| | (2) Petitioner's Motion filed Aug. 3, 1970 in Dkt. 4771-66, to Strike from Resp's Answer Para. 8, and 9(a) | | | |
| | (b)(c)(d)(e) and (f) DENIED. | | | |
| Sept. 21, 1970 | ORDER that petr's. motions filed 8/3, 4/70 are denied. | | | |
| Oct. 5, 1970 | TRANSCRIPT of Sept. 21, 1970 New York, New York rec'd. | | | |
| May 14, 1971 | APPEARANCE by Henry Mayer as counsel for Petr. | | | May 18, 1971 |
| May 14, 1971 | APPEARANCE by Paul M. Levinson as counsel for Petr. | | | May 18, 1971 |
| Feb. 10, 1972 | NOTICE FOR REPORT on May 15, 1972 at New York, N.Y. | | | Feb. 10, 1972 |
| May 15, 1972 | HEARING at New York, N.Y. before Judge Forrester. | | | |
| | For Report Only. | | | |
| May 26, 1972 | TRANSCRIPT of May 15, 1972 rec'd. | | | |
| May 30, 1972 | ORDERED, this case calendared for further oral status report by parties on Oct. 10, 1972 at New York, N.Y. | | | June 2, 1972 |

U.S. GOVERNMENT PRINTING OFFICE: 1959 O-525151

881-548

(Continued to Page 3)

TAX COURT OF THE UNITED STATES

GENERAL DOCKET

DOCKET NO. 2202-66

(Continuation)

| ESTATE OF HERMAN KLEIN, DEC'D., ETC. | | PETITIONER | PAGE 3 |
|--------------------------------------|---|------------|---------------|
| Date | Filings and Proceedings | Action | Served |
| Month Day Year | | | |
| Oct. 10, 1972 | HEARING at New York, N. Y. before Judge Quealy. For Report. | | |
| Oct. 30, 1972 | TRANSCRIPT of Hearing of Oct. 10, 1972 received. | | |
| Nov. 7, 1972 | ORDER, that cases are calendared for trial at a special session on Feb. 5, 1973 at New York, N. Y.; and further ORDER, that Commissioner Johnston is designated to hear these cases. | | Nov. 13, 1972 |
| Nov. 27, 1972 | ORDER, that a pretrial conference with counsel shall be held at New York, N. Y. on Dec. 8, 1972. | | Nov. 28, 1972 |
| Dec. 18, 1972 | ORDERED, that all motions, stipulations of facts, stipulated decisions and trial memorandums shall be filed Jan. 26, 1973. ORDERED each party file trial memo with the court with statement of issue in each case; ORDERED expert witnesses have reports which are to be used at trial, copies of report should be filed with the Court and served on counsel for opposing parties by Jan. 26, 1973 unless proper objection is made by that date, further ORDERED parties endeavor to stipulate evidence to fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or fairly should not be in | | Dec. 26, 1972 |

(continued to page 4)

GPO 884-917

TAX COURT OF THE UNITED STATES

GENERAL DOCKET

DOCKET NO. 2202-66

(Continuation)

| EST. OF HERMEN KLEIN, DEC'D., ETC. | | | PETITIONER | PAGE 4. |
|------------------------------------|---|-------------------------|------------|---------------|
| Date | Filings and Proceedings | Action | Served | |
| Month Day Year | | | | |
| | dispute. Commissioner Johnston (cases calendared for trial at New York City, N.Y. Feb. 5, 1973.) | | | |
| Feb. 1, 1973 | ORDER, that case is continued for trial to a Special session on Mar. 26, 1973 at New York, N.Y. | | | Feb. 2, 1973 |
| Mar. 22, 1973 | MOTION by Resp. for continuance from Mar. 26, 1973, New York, N.Y. to the trial session on May 7, 1973, at New York, N.Y. | (SEE ORDER) | | |
| Mar. 23, 1973 | ORDER, that motion filed on March 22, 1973, is granted and the trial of these cases is continued to a Special Trial Session on May 7, 1973, in New York, N.Y. | | | Mar. 27, 1973 |
| May 3, 1973 | MOTION by Petr. for continuance from May 7, 1973 at New York, N.Y. to June 25, 1973 at New York, N.Y. | GRANTED May 10, 1973 | | May 11, 1973 |
| May 10, 1973 | ORDER, that these cases are continued to a Special Trial Session on June 25, 1973 at New York, N.Y. | | | May 11, 1973 |
| June 15, 1973 | MOTION by Resp. for continuance from June 25, 1973 New York, N.Y. trial session to June 29, 1973 at New York, N.Y. | | | |
| June 18, 1973 | ORDERED that Resp.'s motion is granted these cases are stricken from the calendar for special session at New York, N.Y. | | | June 19, 1973 |
| | ORDERED cases are continued for trial or disposition at a special session June 29, 1973 New York, N.Y. | | | |
| | continued to page 5 | | | |

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 2202-66

(Continuation)

| EST. OF FERMAN KLEIN, Deceased, EEBE KLEIN, MALCOLM KLEIN and IRA KLEIN, EXECUTORS, and EEBE KLEIN, Surviving Wife. | | | PETITIONER | PAGE | 5 |
|--|--|-------------------------|------------|--------------|---|
| Date | Filings and Proceedings | Action | Served | | |
| Month Day Year | | | | | |
| July 27, 1973 | ORDERED that Docket Nos. 2696-64, 2202-66, 502-68, 4771-66, and 489-68 be calendared for trial on Dec. 10, 1973 <u>New York, City, New York.</u> Comm. Johnston. | | | JUL 31 1973 | |
| Sept. 19, 1973 | ORDER, that counsel shall file a trial memorandum with the Court, on or before Nov. 26, 1973 which will set forth the issues involved in each case and further ORDER, that the parties shall endeavor to stipulate evidence and further ORDER, that all motions, stipulations of fact, stipulated decisions and trial memorandums shall be filed with the Court not later than Nov. 26, 1973. | | | SEP 21 1973 | |
| Nov. 1, 1973 | JOINT MOTION to Sever Issues for the purposes of Trial, Briefing, and Opinion. | GRANTED Nov. 5, 1973 | | Nov. 8, 1973 | |
| Nov. 1, 1973 | MOTION by Resp. to consolidate #2696-64 & #2202-66 for trial, Briefing and opinion. | GRANTED Nov. 5, 1973 | | NOV 8 1973 | |
| Nov. 26, 1973 | TRIAL MEMORANDUM filed by Resp. | | | | |
| Dec. 10, 1973 | TRIAL at New York before Commissioner Johnston. Stipulation of Facts filed with Exhibits. (Seriatum Briefs) PETITIONER'S BRIEF DUE: January 24, 1974 RESP. BRIEF IN ANSWER DUE: February 25, 1974 PETR. BRIEF IN REPLY DUE: March 12, 1974 SUBMITTED TO COMMISSIONER JOHNSTON | | | | |

(continued to page 6)

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 2202-66

(Continuation)

| EST OF HERMAN KLEIN ETC | | PETITIONER | PAGE 6 |
|-------------------------|---|----------------------|---------------|
| Date | Filings and Proceedings | Action | Served |
| Month Day Year | | | |
| Dec. 26, 1973 | TRANSCRIPT of Dec. 10, 1973 rec'd. | | |
| Jan. 23, 1974 | BRIEF for Petitioner filed. | | JAN 23 1974 |
| Feb. 25, 1974 | BRIEF IN ANSWER for Resp. filed. | | FEB 26 1974 |
| March 8, 1974 | REPLY BRIEF for Petitioners filed. | | MAR 11 1974 |
| Oct. 15, 1974 | OPINION (report) of Commissioner Johnston filed. | | Oct. 15, 197 |
| Oct. 15, 1974 | ORDER that the parties may file with the Court on or before | | Oct. 15, 1974 |
| | December 2, 1974 a brief setting forth any exceptions | | |
| | of law or of fact to Commissioner Johnston's report, and | | |
| | any replies may be filed on or before January 2, 1975 | | |
| Nov. 27, 1974 | EXCEPTIONS TO THE REPORT OF THE COMMISSIONER. | | DEC 9 1974 |
| | filed by Petr. | | |
| Jan. 2, 1975 | RESP.'S BRIEF IN RESPONSE TO PETR.'S EXCEPTIONS, filed. | | JAN 3 1975 |
| Jan. 27, 1975 | ORDER, that this case is hereby assigned to JUDGE HOWARD | SEE ORDER 3/17/75 | JAN 27 1975 |
| | A. DAWSON, JR., Division 8, for further consideration | | |
| | and disposition of the severed issue. | | |
| Mar. 11, 1975 | FINDINGS OF FACT AND OPINION filed, Judge Dawson. | | MAR 11 1975 |
| | An appropriate order will be entered. | | |
| Mar. 17, 1975 | ORDER, that the severed issues having been decided by | | MAR 18 1975 |
| | the Court, case is returned to Comr. Johnston for | | |
| | direction to set for trial in due course on the | | |
| | other issues presented by the pleadings. | | |
| Mar. 20, 1975 | ORDER, that case is calendared for report on settle- | | MAR 24 1975 |
| | ment at Motions Session on June 25, 1975 at Wash., D.C. | | |
| June 24, 1975 | REPORT ON SETTLEMENT by Resp. filed | | JUN 27 1975 |

(Cont. to page 7)

DOCKET NO. 2202-66

ESTATE OF HERMAN KLEIN, ET AL

PAGE 7

GPO 1973-O-459-479

63 T. C. No. 56

UNITED STATES TAX COURT

ESTATE OF HERMAN KLEIN, DECEASED, BEBE KLEIN, MALCOLM B. KLEIN AND IRA K. KLEIN, EXECUTORS AND BEBE KLEIN, INDIVIDUALLY, Petitioners, v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket Nos. 2696-64 and
2202-66.

Filed March 11, 1975.

Deceased taxpayer was a partner, with a 30 percent interest, in two partnerships. A partnership return was filed showing gross receipts from sales and contracting income in the amount of \$3,545,911.45. The deceased taxpayer and his surviving spouse filed a joint Federal income tax return showing items of gross income in the total amount of \$91,531.15, of which \$90,845.89 was partnership gross income. The amount omitted from the joint return was \$45,733.28. Petitioners contend the "amount of gross income stated in the return" was \$91,531.15. Respondent contends it was \$1,106,896.07. The determination of whether

petitioner-wife is entitled to the benefit of the "innocent spouse" provision of section 6013(e)(1)(A) depends upon the resolution of this issue.

Held:

1. The meaning of the phrase "amount of gross income stated in the return" used in section 6013(e)(1)(A), I.R.C. 1954, must be determined by reference to section 6501(e)(1)(A) as required by section 6013(e)(2)(B).

2. Section 6501(e)(1)(A) defines "gross income" in the case of a trade or business as the total of the amounts received or accrued from the sale of goods or services prior to diminution by the cost of such sales or services and includes in the amount of gross income stated in the return any amount which is disclosed in the return or attached to the return, in a manner adequate to apprise the secretary or his delegate of the nature and amount of such item.

3. The total of the amounts received from the sale of goods and services prior to diminution by the cost of such goods and services disclosed in the return of the partnership in the amount of \$1,106,210.81 is included in the amount of gross income (\$1,106,896.07) stated in the joint return of the deceased taxpayer and the surviving spouse. Genevieve B. Walker, 46 T.C. 630 (1966).

4. Since \$45,733.28 is not in excess of 25 percent of the amount stated in the joint return, the surviving spouse does not qualify for relief under section 6013(e).

5. The gross receipts requirement does not establish an arbitrary and unreasonable classification. Thus, section 6013(e) is not unconstitutional.

Henry Mayer and Paul M. Levinson, for the petitioners.

Powell W. Holly, Jr. and Kimball K. Ross, for the respondent.

DAWSON, Judge: The severed issues in these cases were assigned to and heard by Commissioner Charles R.

Johnston pursuant to Rules 180 and 182, Tax Court Rules of Practice and Procedure. With minor modifications the Court agrees with and adopts the report of Commissioner Johnston which is set forth below.

OPINION OF THE COMMISSIONER

Respondent determined the following deficiencies and additions to tax against petitioners for the taxable years 1955 through 1960:

| <u>Docket No.</u> | <u>Year</u> | <u>Deficiencies</u> | <u>Additions to Tax under sec. 6653(b)</u> ¹ |
|-------------------|-------------|---------------------|---|
| 2696-64 | 1959 | \$ 9,547.71 | \$ 5,266.92 |
| | 1960 | 14,367.61 | 7,183.81 |
| 2202-66 | 1955 | \$48,594.11 | 24,762.81 |
| | 1956 | 14,224.40 | 7,598.20 |
| | 1957 | 11,234.48 | 6,142.87 |
| | 1958 | 7,062.26 | 4,056.34 |

Upon motion by respondent, without objection by petitioners, these cases were consolidated for trial, briefs and opinion.

The principal issue to be decided herein is whether there was omitted from gross income an amount properly includable in the joint return of Herman Klein and Bebe Klein for the taxable year 1955 which is attributable to

1.

All statutory references are to the Internal Revenue Code of 1954, as amended, unless otherwise stated.

Herman Klein and which is in excess of 25 percent of the amount of gross income stated in the return as provided in section 6013(e)(1)(A). The parties have stipulated that Bebe Klein meets the requirements of section 6013(e)(1)(B) and (C) and that she is not liable for any addition to tax under section 6653(b) for the taxable year 1955.

FINDINGS OF FACT

All the facts have been stipulated and are found accordingly.

The petitioners are the Estate of Herman Klein, Deceased, Bebe Klein, Malcolm B. Klein and Ira K. Klein, Executors and Bebe Klein, as surviving wife. The addresses of the above-named individuals at the time of the filing of the petition were as follows:

| | |
|------------------|--|
| Bebe Klein | 201 East 83d Street New York, New York |
| Malcolm B. Klein | 31 Dorchester Street Huntington Station, New York |
| Ira K. Klein | 107 Jackson Place Paramus, New Jersey |

Herman Klein died August 30, 1964. The Surrogates Court of New York County, New York on October 19, 1964, granted letters testamentary on the Estate of Herman Klein to Bebe Klein, Malcolm B. Klein and Ira K. Klein who duly

qualified and were acting as Executors at the time of the submission of this proceeding.

Herman Klein, during the year 1955, was engaged in the manufacture of dresses as a 30 percent partner in the partnerships of Miss Smart Frocks and C & S Dress Company, and as a stockholder in Miss Smart Frocks, Inc. A partnership return, Form 1065, for the taxable year beginning May 1, 1954, and ending April 29, 1955, of Miss Smart Frocks and C & S Dress Company, using the accrual method of accounting, was filed with the District Director of the Upper Manhattan District, New York, New York. For the year ending April 29, 1955, the partnership return of Miss Smart Frocks and C & S Dress Company showed sales in the amount of \$3,545,911.95 and a schedule for the C & S Dress Company included in the partnership return showed gross income from contracting in the amount of \$141,457.40. The petitioners' joint income tax return for the taxable year 1955 did not show the amount of partnership sales or the amount of gross income from contracting, included in the partnership return.

Herman Klein and Bebe Klein timely filed a joint return for the taxable year 1955 with the District Director of the Upper Manhattan District, New York. The joint return showed the following items of gross income:

| | |
|-------------|--------------------|
| Interest | \$ 191.27 |
| Royalties | 494.05 |
| Partnership | <u>\$90,845.89</u> |
| Total | \$91,531.15 |

The joint income tax return of Herman and Bebe Klein for the taxable year 1955 failed to include the following items in income, all of which are attributable to Herman Klein.

| | |
|--------------------|-------------|
| a. Dividend Income | \$21,994.29 |
| b. Other Income | 5,200.00 |
| c. Interest Income | 43.25 |

In addition to the preceding items, the petitioners' joint income tax return failed to include in income, Herman Klein's proportionate share of corrected net partnership income from Miss Smart Frocks and C & S Dress Co. for the taxable year ended April 29, 1955, in the amount of \$18,495.74 which resulted from the disallowance of various claimed deductions on the partnership return.

ULTIMATE FINDINGS OF FACT

The petitioners omitted the following items from gross income on their joint income tax return for the taxable year 1955:

| | |
|-----------------|--------------------------|
| Dividend | \$21,994.29 |
| Other income | 5,200.00 |
| Interest income | <u>43.25</u> |
| Total | \$27,237.54 ² |

2.

We note the conflict between the amount stipulated as omitted from the gross income stated in the joint return and the amount found here. However, since resolution of the conflict would not affect the result, we disregard it.

The net partnership income of \$90,845.89 from Miss Smart Frocks and C & S Dress Co. reported by Herman Klein on his joint income tax for the taxable year 1955 was properly increased by \$18,495.74 representing his proportionate share of deductions of Miss Smart Frocks and C & S Dress Co. which were disallowed for the taxable year ended April 29, 1955.

The joint income tax return for the taxable year 1955 filed by the petitioners reported the following items of gross income:

| | | |
|---|----|-----------------------|
| Interest | \$ | 191.21 |
| Royalties | | 494.05 |
| Distributive share of gross income of partnership, Miss Smart Frocks and C & S Dress Co. | | <u>\$1,106,210.81</u> |
| Total gross income reported | | \$1,106,896.07 |

The amount omitted from gross income does not exceed 25 percent of the sum of \$1,106,896.07.

Petitioner, Bebe Klein, does not meet the requirements of Code §6013(e)(1)(A) with respect to the taxable year 1955, nor does she qualify as an innocent spouse for the taxable year 1955 under the provisions of Code §6013(e).

OPINION

The petitioners contend that the amount omitted from gross income was "in excess of 25 percent of the amount of gross income stated in the return". They base this

contention on the grounds that the amount of gross income stated in the joint return of Herman Klein and Bebe Klein was \$91,531.15 and the amount omitted was \$45,733.28.

Respondent stipulated that the amount omitted from the joint return was \$45,733.28. However, the respondent contends that the "amount of gross income stated in the return" is \$1,106,896.07. He computes this sum as follows:

| | | |
|--|----|-----------------------|
| Interest | \$ | 191.21 |
| Royalties | | 494.05 |
| Partnership (30 percent distributive share of the sales and contracting income of Miss Smart Frocks and C & S Dress Company) | | <u>\$1,106,210.81</u> |
| Total | | \$1,106,896.07 |

The difference between the parties arises over the meaning of the phrase "amount of gross income stated in the return" found in section 6013(e)(1)(A).³

3.

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE. (e) Spouse Relieved of Liability in Certain Cases.--

(1) In General.--Under regulations prescribed by the Secretary or his delegate, if --

(A) a joint return has been made under this section for a taxable year and on such return there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25 percent of the amount of gross income stated in the return,

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission, and

(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income and taking into (CONTINUED)

Petitioners argue that the language of section 6013(e)(1)(A) is so clear and unambiguous that the term "amount of gross income stated in the return" can only have reference to the amount of gross income the taxpayer actually reported in the joint return. There would be much force in this point if the words could be taken out of their particular setting. However, we cannot determine the meaning of the phrase by looking at section 6013(e)(1)(A) alone because section 6013(e)(2)(B) links section 6013(e) with section 6501(e).⁴ Viewed in this light, we think petitioners' argument must fail, for to accept it would render section 6013(e)(2)(B) meaningless.

Footnote 3--Continued

account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to such omission from gross income.

(2) Special rules.--For purposes of paragraph (1)--

(A) the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws, and

(B) the amount omitted from gross income shall be determined in the manner provided by section 6501(e)(1)(A).

4.

Sec. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(e) Substantial Omission of Items.--Except as otherwise provided in subsection(c)--

(1) Income Taxes.--In the case of any tax imposed by subtitle A-- (CONTINUED)

Petitioners further argue that section 6013(e)(2)(B) only incorporates the adequate disclosure requirements under 6501(e)(1)(A) which determine whether an amount, and how much of an amount, has been omitted from gross income but does not incorporate the rules under section 6501(e)(1)(A) which relates to the computation of "the amount of gross income stated in the return." They contend that section 6013(e)(2)(B) only requires the use of section 6501(e)(1)(A) to determine how to compute the amount of omission and not how to compute "the amount of gross income stated in the return." We fail to see how a computation can be made under section 6501(e)(1)(A) of

Footnote 4--Continued

(A) General Rule.--If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph--

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

the amount of gross income omitted from a return without a simultaneous determination of the amount of gross income stated in the return; and, the only way "the amount of gross income stated in the return" can be determined, where a partner of a partnership which has filed a return is concerned, is to consider the partnership return together with the individual return in determining "the total gross income stated in the return" of the individual partner. Genevieve B. Walker, 46 T.C. 630 (1966). See Nadine I. Davenport, 48 T.C. 921, 928 (1967); Accord, Elliott J. Roschuni, 44 T.C. 80 (1965), and Jack Rose, 24 T.C. 755 (1955). Cf. Section 702(c); Section 1.702-1(c)(2), Income Tax Regs.

Petitioners also contend that the legislative history of section 6013(e) supports their position, finding particular comfort in the first sentence of the report of the Finance Committee.⁵ As we read the first sentence we think

5. The first requirement, that the amount omitted from gross income must equal more than 25 percent of the gross income shown on the return, is intended to limit the relief provided in the bill to those cases where the income omitted represents a significant amount relative to the reported income. Whether or not an omission meets this test is to be determined in a manner similar to the test applied under existing law in determining, for purposes of the six-year statute of limitations, when an omission in excess of 25 percent of gross income exists. S. Rept. No. 1537, 91st Cong. p. 3 (1970). 1971-1 C.B. 606, 607.

"the income reported" by a partner includes his share of the gross income, as defined in section 6501(e)(1)(A)(i), of the partnership. Rev. Rul. 55-415, 1955-1 C.B. 412 and I. T. 3981, 1949-2 C.B. 78.⁶

Petitioners next argue that the policy considerations behind section 6501(e) and 6013(e) are different. They point out that section 6013(e) was passed as an amelioratory provision to provide relief for an innocent spouse and that the use of the gross receipts test of section 6501 reduces the chances of an innocent spouse being able to show that the omission exceeded 25 percent of the inflated figure. However appealing this argument may be toward tempering a harsh result, we point out again that if Congress had wished to use the gross income actually reported on the joint return as the amount against which the 25 percent omission was to be measured, it need not have adopted subsection (2)(B) of

6

Respondent cites section 702(c) and section 1.702-1(c)(2), Income Tax Regs., in support of this position. We note in passing our belief that the example given in section 1.702-1(c)(2) Income Tax Regs. conflicts with section 6501(e)(1)(A)(i) and (ii) because under the latter section "gross income" is specially defined and if a partnership return is filed the entire amount of such "gross income" allocable to a partner is deemed reported on the return. We do not think the gross income referred to in section 702(c) is the equivalent of the "gross income" defined under sec. 6501(e)(1)(A).

6013(e).⁷ See Ann B. Resnick, 63 T.C. No. 48 (February 3, 1975).

Another contention made by petitioner is that if Congress had intended that section 6501(e)(1)(A) be used to determine "the amount of gross income stated in the return" it would have worded section 6013(e)(2)(B) as follows:

The amount omitted from gross income and the gross income stated in the return shall be determined in the manner provided by §6501(e)(1)(A).

We must disagree with petitioners since we think section 6501(e)(1)(A)(i) and (ii)⁸ directly deals with the determination of the gross income stated in the return. This is because the partnership return must be read as an adjunct with the individual partner's return in determining the total gross income stated in the individual's return. Indeed, that determination with respect to partnerships arose from the gloss upon the section by the decided cases, compare L. Glenn Switzer, 20 T.C. 759 (1953) with Genevieve B. Walker, supra, and Nadine I. Davenport, supra; Cf. Elliott

7.

We also point out that it is not only an innocent spouse, whose guilty spouse is a member of a partnership, who is affected by a determination that other gross income is imputed to the individual return. The rule would also encompass innocent spouses of sole proprietors, Alvin Howse, T.C. Memo. 1974-225; and innocent spouses of shareholders of Subchapter S corporations. Cf. Elliott J. Roschuni, 44 T.C. 80 (1965). Respondent correctly points out that to interpret the statute in the manner contended for by petitioners, spouses of partners would be treated differently than sole proprietors and Subchapter S shareholders.

8.

Ibid, Footnote 4, (i) and (ii).

9

J. Roschuni, supra; and Jack Rose, supra.

Finally, petitioners contend that the gross receipts test sets up an arbitrary, capricious, unreasonable and unfair classification because an otherwise innocent spouse would be unable to avail herself of the provisions of section 6013(e) when the guilty spouse was a partner in a partnership that had substantial gross receipts with little or no net income or relatively little net income compared with the gross receipts of the business. They urge that the gross receipts test is wholly unrelated to the economic reality of the taxpayers' situation and therefore its use as a basis for establishing classification is arbitrary, capricious, unreasonable and unfair and hence violates due process of law under the Fifth Amendment to the United States Constitution.

In Penn Mutual Indemnity Co., 32 T.C. 653, 658 (1959) this Court said:

An act of Congress is not lightly to be set aside, and doubt must be resolved in its favor. So much is familiar learning. Moreover, the presumption in favor of validity is particularly strong in the case of a revenue measure.* * *

It is with this injunction we approach petitioners' arguments

9.

See also Harry Laudau, 21 T.C. 414 (1953); Norman Rodman, T.C. Memo. 1973-277; and Vernie S. Belcher, T.C. Memo. 1958-180 where it is pointed out that a "partner's share of the gross income on the partnership returns must be imputed to the individual return." And that if the partner-

(CONTINUED)

on the constitutionality of the application of section 6013(e) under the facts of this case.

We certainly must agree with the proposition stated in the cases cited by petitioners that a federal taxing statute may be so arbitrary and capricious as to cause it to fall before the due process of law clause of the Fifth Amendment. Heiner v. Donnan, 285 U.S. 312 (1932); Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916); Moritz v. Commissioner, 469 F. 2d 466 (C.A. 10, 1972), reversing 55 T.C. 113; and Reed v. Reed, 404 U.S. 71 (1971). However, we point out that in both Moritz and Reed, supra, the invidious discrimination was based on sex. Under section 6013(e) both qualified male and female spouses are entitled to the benefits of the section. For that reason we do not think either Moritz or Reed are controlling here.

Section 6013(e) is a mitigation provision and in common with other mitigation provisions not every taxpayer or transaction is entitled to relief. Cf. Section 1311 et seq. See Knowles Electronics Inc. v. United States, 365 F.

Footnote 9--Continued

ship return is not in evidence it is impossible to know the "gross income stated in the return." The six year limitation does not apply if disclosure "is made on or with the tax return." (Emphasis supplied). H. Rept. No. 1337, 83d Cong., 2d Sess., p. 107 (1954); S. Rept. No. 1622, 83d Cong., 2d Sess., pp. 143-144 (1954).

2d 43 (C.A. 7, 1966). The fact that petitioner Bebe Klein suffers a financial hardship if she is found not to be eligible for the relief provided under section 6013(e)¹⁰ should not be controlling.

But the question here is whether in the application of section 6013(e) in conjunction with section 6501(e)(1)(A) to spouses of partners (as well as other spouses as indicated below) that section 6013(e) must fall before the Fifth Amendment as an arbitrary classification.

In United States v. Maryland Savings-Share Insurance Corp., 400 U.S. 4, 6 (1970) the Court stated:

* * *Normally, a legislative classification will not be set aside if any state of facts rationally justifying it is demonstrated to or perceived by the courts. [Citations omitted] * * *

We do perceive a rational basis for the classification. Congress chose as the basis for measuring the amount omitted from gross income under section 6013(e)(1)(A) the provisions of section 6501(e)(1)(A)(ii) which had been used to measure omissions from gross income in determinations of whether a three year or six year statute of limitations applied. Since Congress restricted its relief under section 6013(e) to cases

10.

* * *What warrants specialized treatment such as those which have been indicated? Mention of hardship and financial loss is unconvincing. The world at large and the income tax world in particular are full of hardship and loss despite which it is deemed sound policy to enforce general rules inflexibly. * * *Maguire, Surrey and Traynor, Section 820 of the Revenue Act of 1938. 48 Yale Law Journal 509 (1939).

involving omissions from gross income, the use of a gross receipts test in the case of a trade or business was proper.

The gross receipts test in section 6501(e)(1)(A) was adopted by Congress to eliminate some of the problems which arose under its predecessor, section 275(c) I.R.C. 1939. See The Colony, Inc. v. Commissioner of Internal Revenue, 357 U.S. 28 (1958) and the case cited therein. In Uptegrove Lumber Co. v. Commissioner, 204 F. 2d 570 (C... 3, 1953), the Court found there was "a real ambiguity" in section 275(c) I.R.C. 1939. The committee reports give no indication as to why a gross receipts test was adopted.¹¹ It can only be presumed that it was for the purpose of avoiding litigation as to whether adequate information was given as to the amount of "gross income." Cf. L. Glenn Switzer, supra; and Emma B. Maloy, 45 B.T.A. 1104 (1941). Of course, when section 6501(e)(1)(A) is applied with respect to a taxpayer who is

^{11.}

Several changes from existing law have been made in subsection (e) of this section. In paragraph (1), which relates to income tax, the existing 5-year rule in the case of an omission of 25 percent of gross income has been extended to 6 years. The term gross income as used in this paragraph has been redefined to mean the total receipts from the sale of goods or services prior to diminution by the cost of such sales or services. A further change from existing law is the provision which states that any amount as to which adequate information is given on the return will not be taken into account in determining whether there has been an omission of 25 percent. H. Rept. No. 1337, 83d Cong., 2d Sess., p. A-414 (1954).

a member of a partnership for which a return had been filed to determine whether the three year or the six year statute of limitations applies it normally operates to his benefit. Genevieve B. Walker, supra; Cf. Jack Rose, supra; and Elliott J. Roschuni, supra.

Section 6013(e) was adopted in consequence of a series of decisions imposing fraud penalties and taxes upon the spouses of guilty taxpayers, where admittedly the spouse had no knowledge of the fraud and did not benefit economically from it, because joint returns were filed. Louise M. Scudder, 48 T.C. 36 (1967) reversed and remanded 405 F. 2d 222 (C.A. 6, 1968); Huelsman v. Commissioner, 416 F. 2d 477 (C.A. 6, 1969), remanded for disposition within guidelines of Circuit Court opinion; Betty Bell Wissing (Formerly Betty Bell Huelsman), 54 T.C. 1428 (1970).¹² See also Kathleen C. Vannaman, 54 T.C. 1011 (1970).

In adopting section 6013(e) Congress only provided relief for an innocent spouse where a joint return was filed and all of the other requirements of section 6013(e) were met, including an omission from gross income exceeding 25 percent of the total gross income stated in the return. It did not

12.

For a discussion of the background of section 6013(e) see Meade Emory, "New Law Alleviates Innocent Spouse-Joint Return Problem on Omitted Income," 34 Journal of Taxation 154 (1971).

provide relief for innocent spouses in community property states where no joint returns were filed, even though all the other requirements of section 6013(e) were met. United States v. Mitchell, 403 U.S. 190 (1971); Mary Lou Galliher, 62 T.C. No. 81 (September 3, 1974). In Mitchell the Court suggested the remedy was legislation such as sections 6013(e) and 6653(b). Furthermore, Congress did not provide relief¹³ if the liability was attributable to improper deductions. Petitioners' liability, in part, was attributable to improper deductions on the partnerships' returns. If Congress could constitutionally exclude from relief innocent spouses in community property states where no joint return was filed, it could properly exclude other innocent spouses who could not meet the tests of section 6013(e)(1)(A).

We think it is constitutionally permissible for Congress to take one step at a time in adopting a relief provision, addressing itself first to the phase of the problem which seems to it most egregious. Williamson v. Lee Optical Co., 348 U.S. 483 (1955); McDonald v. Board of Election, 394 U.S. 802, 809 (1969); National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 46 (1937). Congress has apparently decided the potential injustice was greatest

13.

Ibid, Footnote 12.

where an omission from gross income occurred and joint returns were filed. In so limiting its remedy Congress dealt with an appropriate class and it was not bound to include others. Graham & Foster v. Goodcell, 282 U.S. 409, 431-432 (1931). Cf. W. Astor Kirk, 51 T.C. 66 (1968), affd. 425 F. 2d 492 (C.A. D.C., 1970).

We hold petitioners have failed to sustain their burden of overcoming the presumption of the validity of section 6013(e). We also hold that section 6013(e) is constitutional. Having decided the issues before us in favor of the respondent, these cases will be set for trial in due course on the other issues presented by the pleadings.

An appropriate order
will be entered.

UNITED STATES TAX COURT

ESTATE OF HERMAN KLEIN, Deceased,)
 BEBE KLEIN, MALCOLM B. KLEIN and)
 IRA K. KLEIN, Executors and)
 BEBE KLEIN, Individually,)

Petitioners,)

v.)

Docket No. 2202-66

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

DECISION

Pursuant to stipulation of the parties in this case, and in accordance with the opinion of this Court filed March 11, 1975, it is

ORDERED and DECIDED: That there are deficiencies in income taxes due from the petitioners, before application of Int. Rev. Code of 1954, §6013 (e) for the taxable years 1955, 1956, 1957 and 1958 in the amounts of \$27,524.80, \$14,224.40, \$11,234.48 and \$7,062.26, respectively;

That the foregoing deficiencies in income taxes are due from the petitioners under the provisions of Int. Rev. Code of 1954, §6013 (e), as follows:

| <u>Year</u> | <u>Joint Liability</u> | <u>Income Tax</u> |
|-------------|------------------------|-------------------|
| 1955 | | \$27,524.80 |
| 1956 | | NONE |
| 1957 | | NONE |
| 1958 | | NONE |

Additional Amount Due From
the Estate of Herman Klein, Deceased

| <u>Year</u> | <u>Income Tax</u> |
|-------------|-------------------|
| 1956 | \$14,224.40 |
| 1957 | 11,234.48 |
| 1958 | 7,062.26 |

That there are additions to tax due from the petitioner, Estate of Herman Klein, Deceased, under the provisions of Int. Rev. Code of 1954, §6653 (b) for the taxable years 1955, 1956, 1957 and 1958 in the amounts of \$14,228.15, \$7,598.20, \$6,142.87 and \$4,056.34, respectively;

That there are no deficiencies in income taxes due from, or overpayments due to, the petitioner Bebe Klein, for the taxable years 1956, 1957 and 1958 under the provisions of Int. Rev. Code of 1954, §6013 (e); and

That there are no additions to tax due from the petitioner Bebe Klein, under the provisions of Int. Rev. Code of 1954, §6653 (b) for the taxable years 1955, 1956, 1957 and 1958.

(Signed) EDWARD A. DAWSON, JR.

Judge.

Entered: OCT 8 - 1975

* * * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court filed March 11, 1975 and the agreed issues as set forth in the stipulation filed concurrently herewith, and that the Court

may enter this decision without prejudice to the right of either party to contest the correctness of the decision entered herein only to the extent of the matters considered by the Court in its opinion filed March 11, 1975.

It is further stipulated that, effective upon the entry of this decision by the Court, petitioners waive the restrictions, if any, contained in the applicable Internal Revenue laws on the assessment and collection of the deficiencies in income taxes plus statutory interest and the petitioner Estate of Herman Klein, Deceased, waives such restrictions on the assessment and collection of the additions to the tax.



HENRY MAYER,
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MEADE WHITAKER,
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Internal Revenue Service

By: (Sgd) GERALD BACKER-CCMJr
GERALD BACKER,
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New York, New York 10007
Tel. No. 212-264-0262

SEP 30 1975

UNITED STATES TAX COURT

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Docket Nos. 2696-64
2202-66

STIPULATION OF FACTS

The parties hereby stipulate and agree that for the purpose of this case, the following facts and exhibits attached hereto and made a part hereof may be taken as true, subject to the rights of the parties to introduce other and further evidence not inconsistent with this stipulation and preserving the parties' rights to object, at the time of trial, to any and all portions of said stipulation and attached exhibits as they may deem to be irrelevant or immaterial.

1. The petitioners are the Estate of Herman Klein, Deceased, Bebe Klein, Malcolm B. Klein and Ira K. Klein, Executors, and Bebe Klein, as surviving wife. The addresses of the above-named individuals at the time of the filing of the petition were as follows:

- (a) Bebe Klein
201 East 83 Street
New York, N.Y.
- (b) Malcolm B. Klein
31 Dorchester Street
Huntington Station, N.Y.
- (c) Ira K. Klein
107 Jackson Place
Paramus, New Jersey

2. Herman Klein died on August 30, 1964.

3. The Surrogate's Court of New York County on October 19, 1964, granted letters testamentary on the Estate of Herman Klein to Bebe Klein, Malcolm B. Klein and Ira K. Klein, who duly qualified and are presently acting as Executors.

4. Herman Klein and Bebe Klein timely filed a joint return for the taxable year 1955 with the District Director, of the then Upper Manhattan District, New York. Attached hereto and marked Exhibit 1-A is a copy of the petitioners' joint Federal income tax return for the taxable year 1955.

5. Herman Klein, during the year 1955, was engaged in the manufacture of dresses as a 30% partner in the partnerships of Miss Smart Frocks and C & S Dress Company, and as a stockholder in Miss Smart Frocks, Inc.

6. A partnership return, form 1065, for the taxable year beginning May 1, 1954 and ending April 29, 1955 of Miss Smart Frocks and C & S Dress Co., using the accrual method of

accounting, was filed with the District Director, of the then Upper Manhattan District, New York, New York. Attached hereto and marked Exhibit 2-B is a copy of Federal partnership return of Miss Smart Frocks and C & S Dress Co. for the taxable year ended April 29, 1955.

7. The following items were omitted from gross income on said joint return filed by Herman and Bebe Klein:

| | |
|--------------------|--------------|
| Dividend income | \$21,994.29 |
| Other income | 5,200.00 |
| Partnership income | 18,495.74 |
| Interest income | <u>43.25</u> |

| | |
|---|-------------|
| Total amount omitted from Gross income | \$45,733.28 |
|---|-------------|

8. The said joint tax return filed for the year 1955, s shows the following items of gross income:

| | |
|-------------|------------------|
| Interest | \$191.21 |
| Royalties | 494.05 |
| Partnership | <u>90,845.89</u> |
| Total | \$91,531.15 |

9. For the year 1955 the amount omitted from gross income (paragraph 7 herein) totaling \$45,733.28, exceeds 25% of the items of gross income shown in the return (paragraph 8 herein) totaling \$91,531.15.

10. The parties agree that Bebe Klein meets the requirements of the Int. Rev. Code of 1954, § 6013(c)(1)(B) and (C).

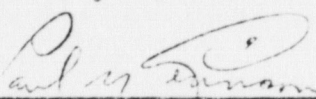
11. For the year ending April 29, 1955, the partnership return of Miss Smart Frocks and C & S Dress Co., showed sales of \$3,545,911.95; a schedule contained therein of C & S Dress Company for the same year showed gross income from contracting of \$141,457.40.

12. The petitioners' 1955 joint tax return did not show therein the items described in paragraph 11.

13. For the year 1955, the amount omitted from gross income (paragraph 7 herein) totaling \$45,733.28) does not exceed 25% of the sum of \$1,106,896.07 which is composed of the following items:

| | |
|---|-----------------------|
| Interest | \$191.21 |
| Royalties | 494.05 |
| Partnership (30% distributive share of the sales and contracting income of Miss Smart Frocks and C & S Dress Company | <u>\$1,106,210.81</u> |
| Total | \$1,106,896.07 |

14. The parties agree that Bebe Klein is not liable for any addition to tax under the provisions of Int. Rev. Code of 1954, § 6653(b) for the taxable year 1955.


Counsel for Petitioners.
(Sgd) MEADE WHITAKER - CCMJE

MEADE WHITAKER,
Chief Counsel,
Internal Revenue Service.

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Page 2

EXEMPTIONS FOR PERSONS OTHER THAN YOUR WIFE AND CHILDREN

| Name | Relationship | Did dependent live in your home? | Did dependent have gross income of \$500 or more? | Amount YOU spent for dependent's support. If 100% write "All" | Amount spent by OTHERS including dependent from own funds |
|------|--------------|----------------------------------|---|---|---|
| | | | | \$ | \$ |
| | | | | | |
| | | | | | |

Enter on line 3, page 1, the number of exemptions claimed above.

→ If an exemption is based on a multiple-support agreement of a group of persons, attach information described on page 5 of instructions.

ITEMIZED DEDUCTIONS—IF YOU DO NOT USE TAX TABLE OR STANDARD DEDUCTION
If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize

Describe deductions and state to whom paid. If more space is needed, attach additional sheets. Please put your name and address on any attachments.

| | | |
|--|---|-----------|
| Contributions | Young Men's Benevolent League | 750.- |
| | NUMEROUS recognized organizations & campaigns | 450.- |
| | Total Contributions (not to exceed 20 percent of line 11, page 1, except in special cases described on page 11 of instructions) | \$ 1200.- |
| Interest | On Income Taxes | |
| | Total | 712.0 |
| Taxes | N.Y. STATE Income Taxes | 5324.63 |
| | N.Y. City Sales & Use Taxes, State Gasoline Taxes, and others | 450.00 |
| | Total | 5774.23 |
| Medical and dental expense (If 65 or over, see instructions, page 1) | Submit itemized list. Do not enter any expense compensated by insurance or otherwise. | |
| | 1. Cost of medicines and drugs, in excess of 1 percent of line 11, page 1 | \$ |
| | 2. Other medical and dental expenses | \$ |
| | 3. Total | |
| | 4. Enter 3 percent of line 11, page 1 | |
| | 5. Allowable amount (excess of line 3 over line 4). (See instructions, page 12, for limitations) | |
| Child care | Expenses for care of children and certain other dependents not to exceed \$600 (See page 13 of instructions and attach statement) | |
| Loss from fire, storm, or other casualty, or theft | Total losses (not compensated by insurance or otherwise) | |
| Miscellaneous | Total | |
| TOTAL DEDUCTIONS (Enter on line 2 of Tax Computation, below) | | \$ 704.23 |

TAX COMPUTATION—IF YOU DO NOT USE THE TAX TABLE

| | |
|--|------------|
| 1. Enter Adjusted Gross Income from line 11, page 1 | \$ 8934.52 |
| 2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized and line 1, above, is \$5,000 or more: (a) married persons filing separately enter \$500; (b) all others enter 10 percent of line 1, but not more than \$1,000 | 1047.23 |
| 3. Balance (line 1 less line 2) | \$ 5887.29 |
| 4. Multiply \$500 by total number of exemptions claimed on line 4, page 1 | 1300.00 |
| 5. TAXABLE INCOME (line 3 less line 4) | \$ 4587.29 |
| 6. Tax on amount on line 5. Use appropriate Tax Rate Schedule on page 14 of instructions | \$ 712.00 |
| 7. If you had capital gains and the alternative tax applies, enter the tax from separate Schedule D | \$ |
| 8. Tax credits. If you itemized deductions, enter: | |
| (a) Credit for income tax payments to a foreign country or U. S. possession (Attach Form 1116) | \$ |
| (b) Income tax paid at source on tax-free covenant bond interest and credit for partially tax-exempt interest | \$ |
| 9. Enter here and on line 12, page 1, the amount shown on line 6 or 7 less amount claimed on line 6 | \$ 375.29 |

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| | | |
|--|--|---|
| SCHEDULE D (Form 1040) | U. S. Treasury Department—Internal Revenue Service GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY Attach this schedule to your Income Tax Return, Form 1040 | 1955 |
| For Calendar Year 1955, or other taxable year beginning _____, 1955, and ending _____, 1955 | | |
| Name and Address Herman and Rose Klein 200 East 70th Avenue, New York, N. Y. | | |
| (I) CAPITAL ASSETS | | |
| Short-Term Capital Gains and Losses—Assets Held Not More Than 6 Months | | |
| a. Kind of property (if necessary, attach statement of descriptive details not shown below) | b. Date acquired (mo., day, yr.) | c. Date sold (mo., day, yr.) |
| | | d. Gross sales price (contract price) |
| | | e. Depreciation allowed (if allowable since acquisition or March 1, 1913 (attach schedule)) |
| | | f. Cost or other basis and cost of subsequent improvements (if not purchased, attach explanation) |
| | | g. Expense of sale |
| | | h. Gain or loss (column d plus column e less sum of columns f and g) |
| 1. | | |
| 2. Enter your share of net short-term gain (or loss) from partnerships and fiduciaries 1955 | | |
| 3. Enter unused capital loss carryover from 5 preceding taxable years (Attach statement) 2 423.13 | | |
| 4. Net short-term gain (or loss) from lines 1, 2, and 3 2 423.13 | | |
| Long-Term Capital Gains and Losses—Assets Held More Than 6 Months | | |
| 5. | | |
| 6. Enter the full amount of your share of net long-term gain (or loss) from partnerships and fiduciaries | | |
| 7. Net long-term gain (or loss) from lines 5 and 6 | | |
| Gain or Loss To Be Taken Into Account | | |
| | | a. Gain |
| | | b. Loss |
| 8. Enter net short-term gain (or loss) from line 4. | | 2 423.13 |
| 9. Enter net long-term gain (or loss) from line 7. | | |
| Use lines 10 through 13 only if gains exceed losses in lines 8 and 9. | | |
| 10. Enter short-term gain (line 8, col. a) reduced by any long-term loss (line 9, col. b). | | |
| 11. Enter long-term gain (line 9, col. a) reduced by any short-term loss (line 8, col. b). | | |
| 12. Enter 50 percent of line 11. | | |
| 13. Enter here and on line 1, Schedule D Summary, Form 1040, the sum of lines 10 and 12. | | |
| Use lines 14 and 15 only if losses exceed gains in lines 8 and 9. | | |
| 14. Enter the excess of losses over gains on lines 8 and 9. | | 2 423.13 |
| 15. Enter here and on line 1, Schedule D Summary, Form 1040, the smallest of the following: (a) the amount on line 14; (b) taxable income computed without regard to capital gains and losses and the deduction for exemptions; or (c) \$1,000 | | 1 000.00 |
| COMPUTATION OF ALTERNATIVE TAX (See instructions on other side as to when the alternative tax applies) | | |
| 16. Enter the income from line 5, page 2, of Form 1040. | | |
| 17. Enter amount from line 12, column a, above. | | |
| 18. Balance (line 16 less line 17) | | |
| 19. Enter tax on amount on line 18 (Use applicable Tax Rate Schedule on page 14 of Form 1040 Instructions). | | |
| 20. Enter 50 percent of line 17. | | |
| 21. Alternative tax (line 19 plus line 20). If smaller than amount on line 6, page 2, Form 1040, enter this alternative tax on line 7, page 2, Form 1040. | | |

(II) PROPERTY OTHER THAN CAPITAL ASSETS

| | | |
|---|----------------------------------|---|
| a. Kind of property (if necessary, attach statement of descriptive details not shown below) | b. Date acquired (mo., day, yr.) | c. Date sold (mo., day, yr.) |
| | | d. Gross sales price (contract price) |
| | | e. Depreciation allowed (if allowable since acquisition or March 1, 1913 (attach schedule)) |
| | | f. Cost or other basis and cost of subsequent improvements (if not purchased, attach explanation) |
| | | g. Expense of sale |
| | | h. Gain or loss (column d plus column e less sum of columns f and g) |
| 1. | | |
| 2. Enter your share of gain (or loss) from partnerships and fiduciaries | | |
| 3. Net gain (or loss) from lines 1 and 2. Enter here and on line 2, Schedule D Summary, Form 1040 | | |

GAINS AND LOSSES FROM SALES OR EXCHANGES OF
 PROPERTY.—Report details in schedule on other side.

"Capital assets" defined.—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business) but does NOT include—

- (a) stock in trade or other property of a kind properly includable in his inventory if on hand at the close of the taxable year;
- (b) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;
- (c) property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167;
- (d) real property used in the trade or business of the taxpayer;
- (e) certain government obligations issued on or after March 1, 1941, at a discount, payable without interest and maturing at a fixed date not exceeding one year from date of issue;
- (f) certain copyrights, literary, musical, or artistic compositions, etc.; or
- (g) accounts and notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property referred to in (a) or (b) above.

Special rules apply to dealers in securities for determining capital gain or ordinary loss on the sale or exchange of securities. Also, in the case of a taxpayer other than a corporation, certain real property subdivided for sale may be treated as capital assets under Sections 1236 and 1237.

If the total distribution to which an employee is entitled under an employee's pension, bonus, or profit-sharing trust plan, which is exempt from tax under section 501(a), is received by the employee in one taxable year, on account of the employee's separation from the service, the aggregate amount of such distribution, to the extent it exceeds the amounts contributed by the employee, shall be treated as a long-term capital gain. See section 402.

A capital gain dividend, as defined in section 852 (relating to tax on regulated investment companies), shall be treated by the shareholder as a long-term capital gain.

Gain on sale of depreciable property between husband and wife or between a shareholder and a "controlled corporation" shall be treated as ordinary gain. Section 1239.

A transfer (other than by gift, inheritance, or devise) by an individual "holder" of all substantial rights evidenced by a patent or an undivided interest therein, shall be considered the sale or exchange of a capital asset held for more than 6 months.

Gains and losses from transactions described in section 1223 (see below) shall be treated as gains and losses from the sale or exchange of capital assets held for more than 6 months if the total of these gains exceeds the total of these losses. If the total of the gains does not exceed the total of these losses, such gains and losses shall not be treated as gains and losses from the sale or exchange of capital assets. Thus, in the event of a net gain, all these transactions should be entered in the "long-term capital gains and losses" portion of Schedule D. In the event of a net loss, all these transactions should be entered in the "property other than capital assets" portion of Schedule D, or in other applicable schedules on Form 1041.

Section 1231 deals with gains and losses arising from—

- (a) sale, exchange, or involuntary conversion, of land (including in certain cases unharvested crops sold with the land) and depreciable property if they are used in the trade business and held for more than 6 months,
- (b) sale, exchange, or involuntary conversion of livestock held for draft, breeding, or dairy purposes (but not including poultry) and held for 1 year or more,
- (c) the cutting of timber or the disposal of timber or coal which section 631 applies, and
- (d) the involuntary conversion of capital assets held more than 6 months.

See sections 1231 and 631 for specific conditions applicable.

Description of property listed.—State following facts: (a) For real estate (including owner's name and residence), location, a description of land and improvements; (b) for bonds or other evidences of indebtedness, name of issuing corporation, particular issue, denomination, and amount; and (c) for stocks, name of corporation, class of stock, number of shares, and capital charged thereon.

Under the new law, the value of the decedent's property is not determined as of the date of the decedent's death, but as of the date of the sale or exchange of the property. The time of property acquired by a decedent on or after 9/18/1912, then, is not relevant to the determination of the estate tax, but is relevant to the extent it is the lower of either as of the date of sale or the fair market value on date of death. Generally, the fair market value of property is whatever is the fair market value at time of acquisition which usually is the date of death. For special cases involving property acquired from a decedent, see section 1014. In the case of sales and exchanges of automobiles and other property not used by the trade or business, or not used for the production of income, the basis for determining gain is the original cost plus the cost

permanent improvements thereto. No losses are recognized for income tax purposes on the sale and exchange of such property. In determining GAIN in case of property acquired before March 1, 1913, use the cost or the fair market value as of March 1, 1913, as adjusted, whichever is greater, but in determining LOSS use cost as adjusted.

Sale of a personal residence.—See Form 1040 instructions for special rules applicable to sale or exchange of your residence.

Losses on securities becoming worthless.—If (a) shares of stock become worthless during the year or (b) corporate securities with interest coupons or in registered form become worthless during the year, and are capital assets, the loss therefrom shall be considered as from the sale or exchange of capital assets as of the last day of such taxable year.

Nonbusiness debts.—If a debt, such as a personal loan, becomes totally worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months. Enter such loss in column (h) and describe in column (a) in the schedule of short-term capital gains and losses on other side. This does not apply to: (a) a debt evidenced by a corporate security with interest coupons or in registered form and (b) a debt acquired in your trade or business.

Classification of capital gains and losses.—The phrase "short-term" applies to gains and losses from the sale or exchange of capital assets held for 6 months or less; the phrase "long-term" applies to capital assets held for more than 6 months.

Treatment of capital gains and losses.—Short-term capital gains and losses will be merged to obtain the net short-term capital gain or loss. Long-term capital gains and losses (taken into account at 100 percent) will be merged to obtain the net long-term capital gain or loss. If the net short-term capital gain exceeds the net long-term capital loss, 100 percent of such excess shall be included in income. If the net long-term capital gain exceeds the net short-term capital loss, 50 percent of the amount of such excess is allowable as a deduction from gross income. This deduction is given effect on line 12 of Schedule D.

Limitation on allowable capital losses.—If the sum of capital losses exceeds the sum of all the capital gains (such gains and losses to be taken into account at 100 percent), then such capital losses shall be allowed as a deduction only to the extent of (1) current year capital gains plus (2) the smaller of either the taxable income of the current year (or adjusted gross income if tax table is used) or \$1,000. For this purpose taxable income is computed without regard to capital gains or losses or the deduction for exemptions. The excess of such allowable losses over the sum of items (1) and (2) above is called "capital loss carryover." It may be carried forward and treated as a short-term capital loss in succeeding years. However, the capital loss carryover of each year should be kept separate, since the law limits the use of such carryover to the five succeeding years. In offsetting your capital gain and income of 1955 by prior year loss carryovers, use only capital loss carryover from 1950 before using any such carryover from 1951 or subsequent years. Any 1950 carryover which cannot be used in 1955 must be excluded in determining total loss carryover to 1956 and subsequent years.

Collapsible corporations.—Gain from the sale or exchange of stock in a collapsible corporation is not a capital gain. Section 341.

"Wash sales" losses.—Losses from the sale or other disposition of stocks or securities are not deductible (unless sustained in connection with the taxpayer's trade or business) if, within 30 days before or after the date of sale or other disposition, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law) or has entered into a contract or option to acquire, substantially identical stocks or securities. Section 1091.

Losses in transactions between certain persons.—No deduction is allowable for losses from sales or exchanges of property directly or indirectly between (1) members of a family, (2) a corporation and an individual (or a fiduciary) owning more than 1 percent of the corporation's stock (liquidations excepted), (3) a grantor and fiduciary of any trust, (4) a fiduciary and a beneficiary of the same trust, (5) a fiduciary and a fiduciary or beneficiary of another trust created by the same grantor, or (6) an individual and a tax-exempt organization, if the loss is realized in a sale or exchange of property between members of the family or trust. A father and son are treated as members of the same family.

ALTERNATIVE TAX.—If the net term interest cannot be ascertained, the net death tax cannot be ascertained. In such cases, the estate tax is computed on the basis of the gross estate, less the net term interest, and the net death tax is computed on the basis of the gross estate, less the net term interest, and the net death tax is computed on the basis of the gross estate, less the net term interest.

COMPUTATION OF SELF-EMPLOYMENT TAX
(For old-age and survivors insurance)
(See instructions—Page 4)

- If during the taxable year you received \$4,200 or more of wages described on line 31 below, do not fill in this page.
► If you have more than one business, a separate page 1, Schedule C, must be completed for each business. However, only one page 3 is to be completed and filed showing the combined net profit from such businesses.

NAME OF SELF-EMPLOYED PERSON (a separate schedule must be filed for each self-employed person)

HERMAN KLEIN

STATE EACH BUSINESS ACTIVITY SUBJECT TO SELF-EMPLOYMENT TAX (for example: Restaurant, Building Contractor, but not Partner or Owner)
DRESS MANUFACTURING

| | | | |
|---|----|-------|--------|
| Line | | | |
| 24. Net profit (or loss) shown on line 23, page 1 (Enter combined amount if more than one business)..... | \$ | | |
| 25. Add to net profit (or subtract from net loss) losses of business property shown on line 15, page 1 | | | |
| 26. Total (or difference) | \$ | | |
| 27. Net income (or loss) from excluded services or sources included on line 26 | | | |
| Specify excluded services or sources..... | | | |
| 28. Net earnings (or loss) from self-employment— | | | |
| (a) From business (line 26 less any amount on line 27) | \$ | | |
| (b) From partnerships, joint ventures, etc. (attach statement) | | | |
| (c) From services as ministers, members of religious orders and Christian Science practitioners | | | |
| (d) From farming reported on separate Schedule F (Form 1040) | | | |
| 29. Total net earnings (or loss) from self-employment reported on line 28 | \$ | 90 | 845 89 |
| (If total of net earnings is under \$400, you are not subject to self-employment tax. Do not fill in remainder of this page.) | | | |
| 30. Maximum amount subject to self-employment tax..... | \$ | 4,200 | 00 |
| 31. Less: Total F. I. C. A. wages paid to you during the taxable year. (See your Withholding Statement, Form W-2)..... | | - | - |
| 32. Maximum amount subject to self-employment tax after adjustment for wages..... | \$ | 4,200 | 00 |
| 33. Self-employment income subject to tax—Line 29 or 32, whichever is smaller..... | \$ | 4,200 | 00 |
| 34. Self-employment tax—3 percent of amount on line 33. Enter here and on line 15, page 1, Form 1040..... | \$ | 126 | 00 |

IMPORTANT—FILL IN ITEMS BELOW COMPLETELY BUT DO NOT DETACH

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loss) on line 27.

Certain professions.—Income from the performance of service as (a) a physician, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, or optometrist; or income from the performance of such service by a partnership; or (b) a Christian Science practitioner, unless such Christian Science practitioner has elected to be covered by the Social Security Act, as explained above.

Religious services.—Income from the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, unless such minister or member of a religious order has elected to be covered by the Social Security Act, as explained above.

Employees and public officials.—Income from the performance of service as:

- (c) a public official, including a notary public;
- (b) an employee or employee representative under the railroad retirement system; or
- (c) an employee. "Employee" includes among others:
 - (1) an agent-driver or commission-driver engaged in distributing meat, vegetable, fruit, and bakery products, beverages (other than milk), or laundry or dry-cleaning services;
 - (2) a full-time life insurance salesman;
 - (3) a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or to a person designated by him; and
 - (4) traveling or city salesmen generally, engaged upon a full-time basis for their principals (except for sideline sales activities on behalf of another person).

Note.—The income of an employee over the age of 18 from the sale of newspapers or magazines to an ultimate consumer is subject to the self-employment tax if the income consists of retained profits from such sales.

Real estate rentals.—Rentals from real estate, except rentals received in the course of a trade or business as a real estate dealer. This includes cash and crop shares received from any individual who agreed to produce a crop or livestock on your land for a share of the crop or livestock if the amount you received depended on the total quantity of commodities produced. Payments for the use or occupancy of rooms or other space where services are also rendered to the occupant, such as rooms in hotels, boarding houses, apartment houses furnishing hotel services, tourist camps, tourist homes, or space in parking lots, warehouses, or storage garages do not con-

by him. Thus, the loss sustained in one trade or business will operate to reduce the income derived from another trade or business. However, no individual should fill in and file more than one Schedule SE for the same year.

JOINT RETURNS

Where husband and wife file a joint income tax return, page 3 of Schedule C (Form 1040) should show the name of the one with self-employment income. Where husband and wife each have self-employment income, a separate Schedule C must be attached for each. In such cases the total of amounts shown on line 23 of each separate schedule should be entered on line 8, page 1, Form 1040, and the aggregate self-employment tax (line 34) should be entered on line 15, page 1, Form 1040.

COMMUNITY INCOME

For the purpose of computing net earnings from self-employment, if any of the income from a trade or business is community income, all the income from such trade or business is considered the income of the husband unless the wife exercises substantially all the management and control of the trade or business, in which case all of such income is considered the income of the wife.

If separate income tax returns are filed by husband and wife, a complete Schedule C should be attached to the return of the one with self-employment income. Community income included on such a schedule must, however, be allocated between the two returns (on line 8, page 1, Form 1040) on the basis of the community property laws.

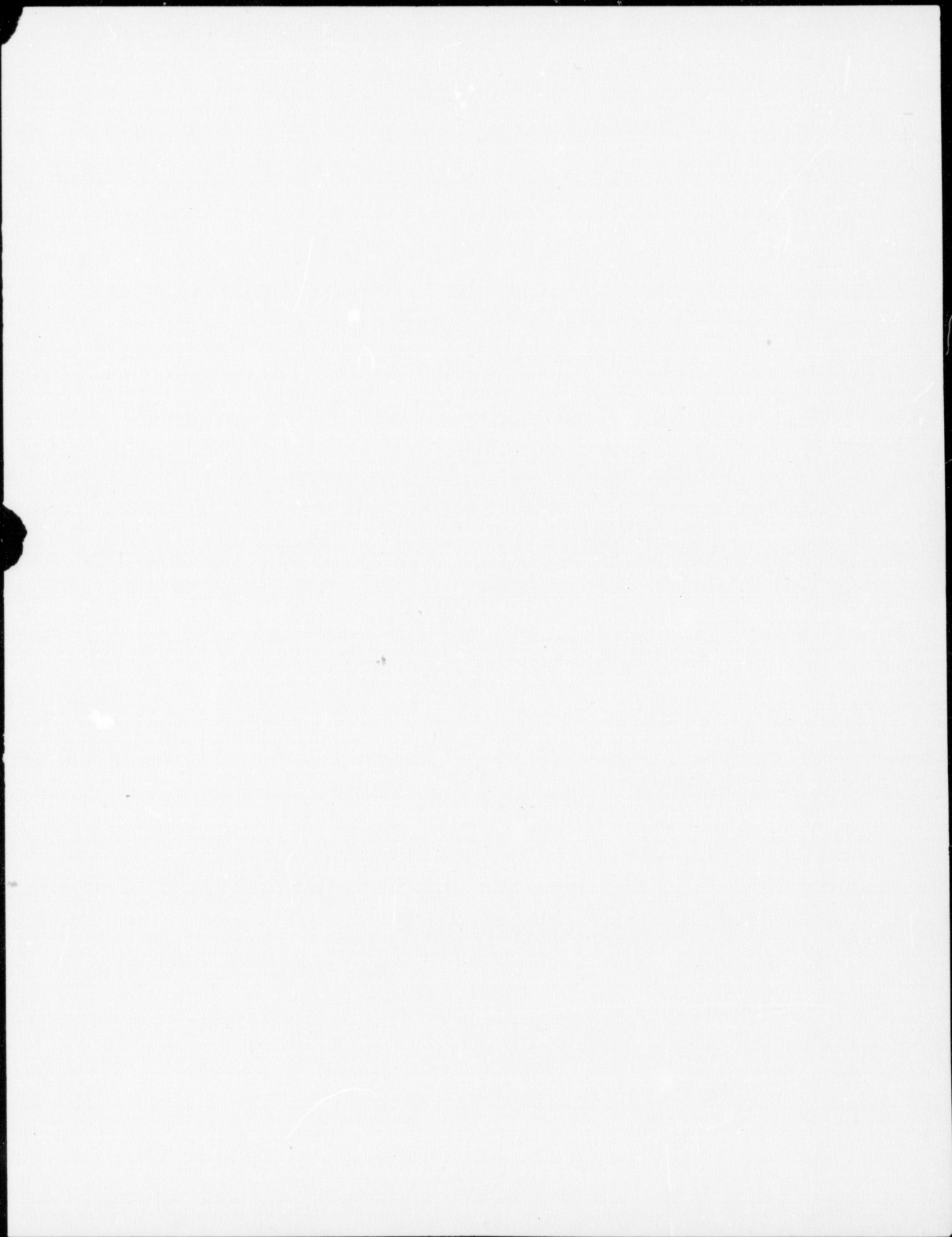
In computing his combined net earnings from self-employment, a partner should include his entire share of such earnings from a partnership. No part of that share may be attributed to the partner's wife (or husband) even though the income may, under State law, be community income.

SCHEDULE SE (Form 1040)

This schedule provides the Social Security Administration with the information on self-employment income necessary for computing benefits under the old age and survivors insurance program.

To assure proper credit to your account, be sure to enter your name and social security account number on Schedule SE (Form 1040) exactly as they are shown on your social security card. If you do not have a social security account number, you must get one. These account numbers are obtainable from any of the approximately 500 Social Security Administration offices throughout the country. The telephone directory or your local post office will give you the address. Do not delay filing your return beyond the due date even though you have not obtained your social security account number.

Regardless of whether joint or separate returns, Form 1040, are filed by husband and wife, Schedule SE (Form 1040) must show only the name of the one with the self-employment income. If both had net earnings from self employment, a separate Schedule SE must be filed by each.



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HERMAN & BEBE KLEIN
200 EAST END AVENUE
NEW YORK, N.Y.

Oil Drilling Income + Expenses
1955

Pecos
Water
Dist.
Pecos
Co.

| | Total | |
|---------------------------------------|----------|-----|
| Income from Sale of Oil | 49405 | |
| Expenses - State taxes | 2304 | |
| Operating expenses | 16271 | |
| Depreciation | 51781 | |
| Loss on sale of equipment | 37186 | |
| | 107542 | |
| Net Income or (Loss) Before Depletion | (58137) | Max |
| Statutory Depletion - 27 1/2 % | 11121 | |
| Net Income or (Loss) | (47016) | |

| |
|---------------------------|
| Loss on Sale of Equipment |
| Cost |
| Less Depreciation |
| Basis |
| Proceeds from sale |
| Loss |

| Depreciation Schedule | Date Acq'd | Cost |
|--------------------------|------------|------|
| Tangibles - Pecos County | 11/52 | |
| TRAC RR #1 | 11/52 | |
| Johnson #1 | 3/53 | |
| Kent Estate | 11/54 | |

County T. + N. G. R.R. #1 Johnson #1 Joint Estate
 r Impvt. Lease Lease Lease
 t County, San Antonio Co. County, N. G. Co. County,
 xas County, Tex. County, Tex. Texas

| | | | |
|-----------|-------|-----------|-----------|
| 23131 | 21274 | - | - |
| 1312 | 992 | - | - |
| 12036 | 3333 | 900 | - |
| 2990 | 65- | 5958 | 3633 |
| - | - | 37186 | - |
| 16338 | 10825 | 44046 | 36333 |
| 11793 | 10449 | (44046) | (36333) |
| 5497 Max. | 5224 | - | - |
| 5896 | 5225 | (44046) | (36333) |

3153 65000
 16773
 48222
 12155 11016
 37186

| t | Prior Depreciation | Method | E t. Life | Depreciation |
|--------|--------------------|----------|-----------|--------------|
| 294 - | 6224 | St. Line | 10 yrs. | 2940 |
| 650 - | 11360 | St. Line | 10 yrs. | 65- |
| 650 - | 10820 | St. Line | 10 yrs. | 5958 |
| 181663 | 36332 | St. Line | 5 yrs. | 36333 |
| | | | | 57781 |

IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 AND 2.

Schedule A.—INCOME FROM DIVIDENDS

| | Amount |
|---|--------|
| 1. Name of qualifying corporation declaring dividend (See instructions, page 6, for definition of qualifying corporation): | \$ |
| 2. Total | \$ |
| 3. Exclusion of \$50 (If both husband and wife received dividends, each is entitled to exclude not more than \$50 of his (her) dividends) | \$ |
| 4. Enter excess, if any, of line 2 over line 3 | \$ |
| 5. Name of nonqualifying corporation declaring dividend: | |
| 6. Enter total of lines 4 and 5 | \$ |

Schedule B.—INCOME FROM INTEREST

| Name of payer | Amount | Name of payer | Amount |
|-------------------------------|------------------|---------------|--------|
| 1. <i>First National Bank</i> | \$ <i>132.00</i> | | |
| 2. <i>First National Bank</i> | \$ <i>132.00</i> | | |
| Enter total here → | | | |

Schedule D Summary.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

| | |
|---|---------------------|
| 1. From sale or exchange of capital assets (from separate Schedule D) | (<i>1,000.00</i>) |
| 2. From sale or exchange of property other than capital assets (from separate Schedule D) | |

Schedule E.—INCOME FROM PENSIONS OR ANNUITIES (See instructions, page 8)

Part I.—General Rule

| | | | |
|---|----|--|----|
| 1. Investment in contract | \$ | 4. Amount received this year | \$ |
| 2. Expected return | \$ | 5. Amount excludable (line 4 multiplied by line 3) | |
| 3. Percentage of income to be excluded (line 1 divided by line 2) | % | 6. Taxable portion (excess, if any, of line 4 over line 5) | |

Part II.—Where your cost will be recovered within three years and your employer has contributed part of the cost

| | | | |
|---|----|--|----|
| 1. Cost of annuity (amounts paid in) | \$ | 4. Amount received this year | \$ |
| 2. Cost received tax-free in past years | | 5. Taxable portion (excess, if any, of line 4 over line 3) | |
| 3. Remainder of cost (line 1 less line 2) | \$ | | |

Schedule G.—INCOME FROM RENTS AND ROYALTIES

| 1. Kind and location of property | 2. Amount of rent or royalty | 3. Depreciation (explain in Sch. I) or depletion | 4. Repairs (attach itemized list) | 5. Other expenses (attach itemized list) |
|--|------------------------------|--|-----------------------------------|--|
| <i>Oil lease - Schedule Attached</i> | | | \$ | \$ |
| 1. Totals | \$ | \$ | \$ | \$ |
| 2. Net profit (or loss) (column 2 less sum of columns 3, 4, and 5) | <i>Loss</i> | | | |

Schedule H.—INCOME FROM PARTNERSHIPS, ESTATES, TRUSTS, AND OTHER SOURCES

| | |
|---------------------------------------|---|
| 1. Partnership (Name and address) | <i>First National Bank - 1234 Main St, New York, N.Y.</i> |
| 2. Estate or trust (Name and address) | |
| 3. Other sources (state nature) | |

Total income (or loss) from above sources (Enter here and on line 10, page 1) \$ *8,700.00*

Schedule I.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE G

| 1. Kind of property (if buildings, state material of which constructed). Excludes land and other nondepreciable property | 2. Date acquired | 3. Cost or other basis | 4. Depreciation allowed (or allowable) in prior years | 5. Method of computing depreciation | 6. Rate (1/3 or life (years)) | 7. Depreciation for this year |
|--|------------------|------------------------|---|-------------------------------------|-------------------------------|-------------------------------|
| <i>Building - Attached</i> | | \$ | \$ | | | \$ <i>5,700.00</i> |

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IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 AND 2.

Page 4

Schedule J.—DIVIDENDS RECEIVED CREDIT

(See instructions, page 15)

| | | |
|--|----|--|
| 1. Amount of dividends on line 4, Schedule A..... | \$ | |
| 2. Tentative credit (4 percent of line 1)..... | \$ | |
| LIMITATIONS ON CREDIT | | |
| 3. Tax shown on line 12, page 1, plus amount, if any, shown on line 8(b), page 2..... | \$ | |
| 4. 4 percent of taxable income..... | \$ | |
| Taxable Income Means (a) If tax is computed on page 2, the amount shown on line 5, page 2. (b) If capital gains alternative tax applies, the amount shown on line 18, separate Schedule D. (c) If Tax Table is used, the amount shown on line 11, page 1, less 10 percent thereof, and less the deduction for exemptions (\$600 multiplied by the number of exemptions claimed on line 4, page 1). | | |
| 5. Dividends received credit. Enter here and on line 13(a), page 1, the smallest of the amounts on lines 2, 3, or 4, above..... | \$ | |

Schedule K.—RETIREMENT INCOME CREDIT (See instructions, page 15)

This credit does not apply:

1. If you received Social Security or Railroad Retirement pensions or annuities of \$1,200 or more, OR
2. If you are under 75 years of age and had "earned income" of \$2,100 or more.

If separate return, use column B only. If joint return, use column A for wife and column B for husband —>
 Did you receive earned income in excess of \$600 in each of any 10 calendar years before the taxable year 1955? Widow or widowers see instructions, page 15.....

If answer above is "Yes" in either column, furnish all information below in that column.

| | A | | B | |
|--|------------------------------|-----------------------------|------------------------------|-----------------------------|
| | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 1. Retirement income for taxable year which is included in line 11, page 1, of this return: | | | | |
| (a) For taxpayers under 65 years of age: Enter only income received from pensions and annuities under public retirement systems, including pensions, annuities, and retirement pay from Armed Forces..... | \$ | | \$ | |
| (b) For taxpayers 65 years of age and older: Enter total of pensions and annuities, retirement pay from Armed Forces, interest, rents, and dividends..... | \$ | | \$ | |
| LIMITATION ON RETIREMENT INCOME | | | | |
| 2. Maximum amount of retirement income for credit computation..... | \$ | 1,200 00 | \$ | 1,200 00 |
| 3. Deduct: | | | | |
| (a) Amounts received in taxable year as pensions or annuities under the Social Security Act, the Railroad Retirement Acts, and certain other exclusions from gross income..... | \$ | | \$ | |
| (b) Compensation in excess of \$900 received in the taxable year 1955 for personal services (This line does not apply to persons 75 years of age or over)..... | \$ | | \$ | |
| 4. Total of lines 3(a) and 3(b)..... | \$ | | \$ | |
| 5. Balance (line 2 minus line 4)..... | \$ | | \$ | |
| 6. Line 5 or line 1, whichever is lesser..... | \$ | | \$ | |
| 7. Tentative credit (20 percent of line 6)..... | \$ | | \$ | |

8. Total tentative credit on this return (total of amounts on line 7, columns A and B).....

LIMITATION ON RETIREMENT INCOME CREDIT

| | | |
|--|----|--|
| 9. Amount of tax shown on line 12, page 1..... | \$ | |
| 10. Less: Dividends received credit from line 5, Schedule J, above..... | \$ | |
| 11. Balance (line 9 less line 10)..... | \$ | |
| 12. Retirement income credit. Enter here and on line 13(b), page 1, the amount on line 8 or line 11, whichever is smaller..... | \$ | |

Form L-1085

EXTENSION TO 11/15/55 ATTACHED

FORM 1085

U. S. Treasury Department
Internal Revenue ServiceU. S. PARTNERSHIP
RETURN OF
INCOME(To Be Filed Also by
Syndicates, Pools, Joint
Ventures, Etc.)

FOR CALENDAR YEAR 1954

or other taxable

year beginning MAY 1, 1954, and ending APRIL 29, 1955

PLEASE TYPE OR PRINT PLAINLY

Name

MISS SMART FROCKS & C & S DRESS CO.

Number and Street

501 SEVENTH AVENUE

City, town, postal zone number, State

NEW YORK

18, N. Y.

1954

Do not write in space below

Serial No.

PN

2272

Item and
Instruction No.

GROSS INCOME

Less: Returns

1. Gross receipts from business or profession \$..... and allowances \$.....

2. Less cost of goods sold: (a) Inventory at beginning of year \$.....

(b) Merchandise bought for manufacture or sale \$.....

(c) Cost of labor, supplies, etc. \$.....

(d) Total of lines (a), (b), and (c) \$.....

(e) Less inventory at end of year \$.....

3. Gross profit (or loss) from business or profession (item 1 less item 2) \$.....

4. Income (or loss) from other partnerships, syndicates, pools, etc. (State separately name,
address, and amount):

5. Dividends. (Attach itemized statement)

6. Interest on bank deposits, notes, corporation bonds, etc. (except interest reported in item 7)

7. Interest on tax-free covenant bonds upon which a Federal tax was paid at source

8. Interest on Government obligations, etc., unless wholly exempt from tax

9. Rents

10. Royalties

11. Net gain (or loss) from sale or exchange of property other than capital assets (from line 2,
separate Schedule D)

12. Other income. (Attach statement showing nature of income)

13. Total income in items 3 to 12 \$.....

DEDUCTIONS

14. Salaries and wages. (Do not include compensation for partners)

15. Rent

16. Interest on indebtedness. (Explain in Schedule A). (Do not include interest on capital
invested in the business by any partner)

17. Taxes. (Explain in Schedule B)

18. Losses by fire, storm, shipwreck, or other casualty, or theft. (Attach schedule)

19. Bad debts. (Explain in Schedule C)

20. Repairs

21. Depreciation and amortization. (Explain in Schedule E)

22. Depletion of mines, oil and gas wells, timber, etc. (Attach schedule)

23. Other deductions authorized by law. (Explain in Schedule F)

24. Total deductions in items 14 to 23

25. Ordinary net income (item 13 less item 24) \$ 311 594 62

26. Net short-term capital gain (or loss) (from line 6, separate Schedule D) \$ NONE

27. Net long-term capital gain (or loss) (from line 9, separate Schedule D) \$ NONE

Did the partnership pay anyone for assistance in the preparation of this return? ☒ Yes ☐ No

If answer is "Yes," enter his name and address

J. M. LEVY & CO. - 55 WEST 42ND STREET, N. Y. 36, N.Y.

SIGNATURE AND VERIFICATION

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by
me, and to the best of my knowledge and belief is a true, correct, and complete return.

X

(Signature of partner or member)

(Date)

I declare under the penalties of perjury that I prepared this return for the person(s) named herein; and that this return (including any
accompanying schedules and statements) is, to the best of my knowledge and belief, a true, correct, and complete return based on all the
information relating to the matters required to be reported in this return of which I have any knowledge.

(Individual or Firm Signature)

55 WEST 42ND STREET, N.Y. 36, N.Y.

(Address)

10/10/55

(Date)

16-70129-1

Schedule A.—INTEREST ON INDEBTEDNESS. (See Instruction 16)

| Explanation | Amount | Explanation (continued) | Amount (continued) |
|-------------|--------|----------------------------------|--------------------|
| | \$ | | \$ |
| | | | |
| | | | |
| | | | |
| | | | |
| | | Total (Enter as item 16, page 1) | \$ |

Schedule B.—TAXES. (See Instruction 17)

| Nature | Amount | Nature (continued) | Amount (continued) |
|--------|--------|----------------------------------|--------------------|
| | \$ | | \$ |
| | | | |
| | | | |
| | | | |
| | | | |
| | | Total (Enter as item 17, page 1) | \$ |

Schedule C.—BAD DEBTS. (See Instruction 19)

| 1. Taxable year | 2. Net income reported | 3. Sales on account | 4. Bad debts of organization if no reserve is carried on books | If organization carried a reserve | |
|-----------------|------------------------|---------------------|--|-----------------------------------|-----------------------------------|
| | | | | 5. Gross amount added to reserve | 6. Amount charged against reserve |
| 1951 | \$ | \$ | \$ | \$ | \$ |
| 1952 | | | | | |
| 1953 | | | | | |
| 1954 | | | | | |

NOTE.—1. Check whether deduction claimed represents debts which have become worthless ☐ , or is an addition to a reserve ☐ .
 2. Securities which are capital assets and which became worthless within the taxable year should be reported in separate Schedule D.

Schedule D.—NET GAIN OR LOSS FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

The details of sales or exchanges of capital assets and sales or exchanges of property other than capital assets must be shown on separate Schedule D to be attached. The summary amounts from the attached Schedule D must be shown in items 11, 26, or 27 of page 1, respectively.

Schedule E.—DEPRECIATION AND AMORTIZATION (WHEREVER CLAIMED) (See Instruction 21)
 Attach a detailed schedule in support of each of the lines in this schedule

| Part A.—DEPRECIATION CLAIMED | | Part B.—AMORTIZATION CLAIMED | |
|---|-------------|--|-------------|
| 1. Straight line method | \$ 8,986.70 | 7. Emergency facilities | \$ |
| 2. Declining balance method | 783.44 | 8. Grain storage facilities | |
| 3. Sum of the years-digits method | | 9. Research or experimental expenditures | |
| 4. Depreciation based on | | 10. Exploration and development expenditures (Sec. 615 and Sec. 616) | |
| (a) Units of production | | | |
| (b) Hours of machine operation | | | |
| 5. Other methods | | | |
| 6. Total depreciation claimed | \$ 9,770.14 | 11. Total amortization claimed | \$ |
| Part C | | | |
| 12. Enter here the total of lines 6 and 11 | | | \$ 9,770.14 |
| 13. Less: Depreciation and amortization claimed in cost of goods sold (item 2, page 1) or elsewhere | | | - |
| 14. Balance—Enter here and as item 21, page 1 | | | \$ 9,770.14 |

NOTE.—Include amortization of bond premium allowable under section 171 in Schedule F below.

Schedule F.—OTHER DEDUCTIONS. (See Instruction 23)

| Explanation | Amount | Explanation (continued) | Amount (continued) |
|-------------|--------|----------------------------------|--------------------|
| | \$ | | \$ |
| | | | |
| | | | |
| | | | |
| | | | |
| | | Total (Enter as item 23, page 1) | \$ |



U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
484 LEXINGTON AVENUE
NEW YORK 17, N. Y.

IN REPLYING REFER TO:
Code 2321
FL 2-142

Jacques M. Levy & Co.
55 W. 42nd Street
New York 36, N.Y.

August 18, 1955

Re: Miss Smart Frocks
501 Seventh Ave., NYC, NY

Taxable Year: 4-30-55
Extension granted to: 11-15-55

Your request for an extension of time within which to file your partnership income tax return on Form 1065 is granted for such period as may be necessary, but not later than the date shown above.

YOUR RETURN WITH THIS LETTER ATTACHED SHOULD BE FILED IN THIS OFFICE.

Very truly yours,

A handwritten signature in cursive script, reading "Harold B. A'Hearn".

Harold B. A'Hearn
District Director

FL 2-142

MISS SMART FROCKS
 PROFIT & LOSS STATEMENT
 FOR THE YEAR ENDED APRIL 29, 1955

| | | | |
|---|-------------------|------------------|--------------------------|
| INCOME FROM SALES | | | 3 545 911.95 |
| LESS: RETURNS & ALLOWANCES | 153 712.18 | | |
| DISCOUNTS | <u>232 043.23</u> | | |
| NET SALES | | | <u>385 755.41</u> |
| COST OF SALES - SCHEDULE 1 | | | <u>3 160 155.54</u> |
| GROSS PROFIT | | | <u>2 574 734.35</u> |
| | | | <u>505 422.19</u> |
| OVERHEAD | | | |
| SHIPPING SALARIES | 23 082.01 | | |
| SHIPPING SUPPLIES & SERVICES | 12 924.28 | | |
| PARCEL POST & EXPRESS | 18 499.14 | | |
| COMMISSIONS | 4 620.97 | | |
| N.Y. CITY TAX ON SALES | 4 210.00 | | |
| PROVISION FOR BAD DEBTS | 3 094.36 | | |
| OTHER SALARIES & WAGES | 71 923.38 | | |
| RENT & RENT ITEMS | 16 676.77 | | |
| TELEPHONE & TELEGRAMS | 5 023.37 | | |
| AMORTIZATION & DEPRECIATION | 9 091.18 | | |
| SUPPLIES, SERVICES & SUNDRIES | 12 731.17 | | |
| INSURANCE | 6 238.10 | | |
| ADVERTISING | 7 420.01 | | |
| AUTO EXPENSES | 3 222.15 | | |
| TRAVEL & ENTERTAINMENT | 31 494.10 | | |
| MEMBERSHIPS | 2 399.56 | | |
| PROFESSIONAL SERVICES | 8 250.00 | | |
| INTEREST | 2 416.43 | | |
| PAYROLL TAXES | 3 099.70 | | |
| COMPENSATION INSURANCE | 574.75 | | |
| UNION FUNDS | 186.00 | | |
| BONUS & CHRISTMAS EXPENSE | 28 165.42 | | |
| LOSS ON SALE OF FIXED ASSETS-SCHEDULE 2 | 818.32 | | |
| N.Y.S. UNINCORPORATED BUSINESS TAX | 11 941.44 | | |
| | <u>200 102.61</u> | | |
| LESS: RENT INCOME | 990.00 | | |
| PURCHASE DISCOUNTS | <u>13 193.73</u> | <u>14 183.73</u> | <u>273 918.83</u> |
| NET PROFIT FOR THE YEAR | | | <u><u>311 503.31</u></u> |

TAXPAYER'S NAME MISS SMART FROCKS & C & S DRESS CO.

| 1. KIND OF PROPERTY (IF BUILDING, INCLUDE MATERIAL OF WHICH CONSTRUCTED) EXCLUDE LAND OR OTHER NON-DEPRECIABLE PROPERTY | 2. DATE ACQUIRED | 3. COST OTHER |
|---|---------------------|------------------|
| 1 <u>STRAIGHT LINE</u> | | |
| 2 <u>C & S DRESS CO. - MACH. & EQUIP.</u> | <u>VARIOUS</u> | <u>6</u> |
| 3 | | |
| 4 <u>MISS SMART FROCKS (TRANSFERRED 1/31/55)</u> | | |
| 5 <u>LEASEHOLD IMPROVEMENTS</u> | <u>VARIOUS</u> | <u>20</u> |
| 6 <u>MACHINERY & EQUIPMENT</u> | <u>"</u> | <u>2</u> |
| 7 <u>OFFICE FURN. & FIXTURES</u> | <u>"</u> | <u>8</u> |
| 8 <u>" " " "</u> | <u>"</u> | <u>1</u> |
| 9 <u>AUTO EQUIPMENT - TRADED</u> | <u>12/54</u> | <u>5</u> |
| 10 <u>" "</u> | <u>VARIOUS</u> | <u>6</u> |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 <u>DECLINING BALANCE</u> | | |
| 17 <u>MISS SMART FROCKS (TRANSFERRED 1/31/55)</u> | | |
| 18 <u>MACHINERY & EQUIPMENT</u> | <u>VARIOUS</u> | <u>1</u> |
| 19 <u>OFFICE FURN. & FIXTURES</u> | <u>"</u> | <u>2</u> |
| 20 <u>AUTO EQUIPMENT</u> | <u>12/54</u> | <u>5</u> |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 <u>TOTAL</u> | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |
| 29 | | |
| 30 | | |
| 31 | | |
| <u>TOTAL</u> | | |

TRANS FACE SCHEDULE 9

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ATION SCHEDULE

YEAR ENDED

195

| T OR BASIS | 4. DEPRECIATION ALLOWED (OR ALLOWABLE IN PRIOR YEARS) | 5. REMAINING COST OR OTHER BASIS TO BE RECOVERED | 6. LIFE USED IN ACCUMULATING DEPRECIATION | 7. ESTIMATED LIFE FROM BEGINNING OF YEAR | 8. DEPRECIATION ALLOWABLE THIS YEAR |
|-------------------|--|--|---|---|---|
| 7-74 | 1,520.52 | 5,220.22 | 10 YRS. | | 671.96 |
| 0-81 | 21,850.8 | 6,220.97 | LEASE | | 6,220.97 |
| 0-81 | 1,371.1 | 1,871.61 | 10 YRS. | | 241.56 |
| 0-85 | 2,250.1 | 6,770.09 | 10 YRS. | | 571.66 |
| 7-85 | 572.48 | 1,112.67 | 10 YRS. | | 221.82 |
| 0-89 | 1,983.85 | 3,013.13 | 4 YRS. | | 721.11 |
| 1-89 | 5,576.10 | 8,752.52 | 4 YRS. | | 321.32 |
| | | | | | <u>9,770.14</u> |
| 12-70 | - - | 1,127.70 | 10 YRS. | | 127.04 |
| 0-82 | - - | 2,539.39 | 10 YRS. | | 253.82 |
| 3-80 | - - | 5,377.30 | 4 YRS. | | 447.62 |
| | | | | | <u>1,328.48</u> |
| | | | | | <u>9,770.14</u> |
| C. & S. DRESS CO. | | | | 678.96 | |
| MID-SMART FROCK | | | | 9,091.18 | |
| | | | | <u>9,770.14</u> | |
| STRAIGHT LINE | | | | 8,526.70 | |
| DECLINING BALANCE | | | | 122.44 | |
| | | | | <u>9,770.14</u> | |

MISS SMART FROCKS
SCHEDULES
FOR THE YEAR ENDED APRIL 29, 1955

SCHEDULE 1 - COST OF GOODS SOLD

| | | | |
|-------------------------------------|-----|--------|---------------------|
| INVENTORY AT BEGINNING | | 203 | 836.01 |
| PURCHASES - PIECE GOODS | | 1 224 | 012.02 |
| FINISHED SAMPLES | | 1 | 623.12 |
| LININGS & TRIMMINGS | | 330 | 463.68 |
| CUTTING SALARIES | | 43 | 377.25 |
| DESIGNING & PATTERN MAKING SALARIES | | 9 | 750.00 |
| SAMPLE MAKER | | 4 | 686.05 |
| PAYROLL TAXES | | 1 | 111.86 |
| COMPENSATION INSURANCE | | | 409.50 |
| UNION FRINGES | | 2 | 649.18 |
| CUTTING SUPPLIES & SERVICES | | 7 | 056.39 |
| CONTRACTORS CHARGES | | 861 | 669.50 |
| UNION FRINGES ON CONTRACTORS | | 73 | 967.79 |
| | | 2 764 | 612.35 |
| LESS: CUT GOODS SOLD | 5 | 364.00 | |
| INVENTORY AT END | 184 | 514.00 | 189 878.00 |
| COST OF GOODS SOLD | | | <u>2 574 734.35</u> |

SCHEDULE 2 - LOSS ON SALE OF FIXED ASSETS

| | | |
|-------------------------------|---|---------------|
| COST - 1952 | 1 | 710.15 |
| LESS DEPRECIATION | | 441.83 |
| BASIS | 1 | 268.32 |
| SALES PROCEEDS - JANUARY 1955 | | 450.00 |
| LOSS | | <u>818.32</u> |

C & S DRESS CO.
 PROFIT & LOSS STATEMENT
 FOR THE YEAR ENDED APRIL 29, 1955

INCOME FROM CONTRACTING WORK

141 457.40

DIRECT COSTS

OPERATORS

74 355.88

PRESSERS

18 042.24

FINISHERS

5 981.82

FLOOR EMPLOYEES

17 673.13

COMPENSATION & LIABILITY INSURANCE

1 000.84

TRIMMINGS

2 082.60

TRUCKING

3 845.51

122 982.02

BALANCE AVAILABLE FOR OVERHEAD

18 475.38

OVERHEAD

MANAGERS

6 094.40

PAYROLL TAXES

307.40

RENT

3 600.00

LIGHT & POWER

1 110.27

TELEPHONE

346.04

DEPRECIATION

678.96

SUPPLIES & SERVICES - FACTORY

1 442.87

INSURANCE

389.43

PROFESSIONAL SERVICES

1 200.00

SUPPLIES & SERVICES - OFFICE

402.86

LOSSES

153.66

N.Y. CITY TAXES

98.68

BONUS & CHRISTMAS EXPENSES

2 559.50

18 381.07

NET PROFIT FOR THE YEAR

91.31

MISS SMART FROCKS & C & S DRESS CO.
 PARTNERS ACCOUNTS
 APRIL 29, 1955

SCHEDULE

| | 1. CAPITAL A/C AT BEGINNING | 2. ORDINARY NET INCOME |
|---|-----------------------------------|------------------------------|
| (A) HERMAN KLEIN-200 EAST END AVE. NY | 91 477.29 | 90 845.89 |
| (B) MAX ROSEMAN-1 GRACIE TERRACE, N.Y. | 83 794.09 | 87 920.88 |
| (C) JOSEPH BUFFA-1260-85TH ST. B'KLYN, NY | 69 954.04 | 65 413.93 |
| (D) LEO CARLINO-1819-83RD ST., B'KLYN, NY | 68 681.35 | 66 413.92 |
| (E) JAMES SABELLA-1338-85TH ST., B'KLYN, NY | 73 457.04 | - - |
| | <hr/> 387 404.31 | <hr/> 311 594.62 |

SCHEDULE "J"

6. WITHDRAWALS

7. CAPITAL
A/C AT END
OF YEAR

| | | | |
|----|--------|-----|--------|
| 63 | 581.15 | 118 | 742.03 |
| 57 | 710.39 | 114 | 604.58 |
| 50 | 018.56 | 86 | 359.41 |
| 55 | 326.73 | 79 | 769.04 |
| 73 | 457.04 | - | - |

| | | | |
|-----|--------|-----|--------|
| 300 | 123.87 | 398 | 875.06 |
|-----|--------|-----|--------|

SCHEDULE "K"

2. % OF TIME
DEVOTED TO
BUSINESS

3. ORDINARY
NET
INCOME

11. NET

EARNINGS
FROM SELF-
EMPLOYMENT

| | | | | |
|-----|----|--------|----|--------|
| ALL | 90 | 845.89 | 90 | 845.89 |
| ALL | 87 | 920.88 | 87 | 920.88 |
| ALL | 66 | 413.93 | 66 | 413.93 |
| ALL | 66 | 413.92 | 66 | 413.92 |
| | - | - | - | - |

(WITHDREW FROM PARTNER-
SHIP MAY 1, 1954)

| | | | |
|-----|--------|-----|--------|
| 311 | 594.62 | 311 | 594.62 |
|-----|--------|-----|--------|

MISS CHART FROCKS & C & S DRESS CO.
BALANCE SHEETS
APRIL 29, 1955

ASSETS

1. CASH
2. NOTES & ACCOUNTS RECEIVABLE
3. INVENTORIES - OTHER THAN LAST-IN, FIRST-OUT
5. DEPRECIABLE ASSETS
LESS ACCUMULATED DEPRECIATION & AMORTIZATION
NET
10. OTHER ASSETS
11. TOTAL ASSETS

LIABILITIES & CAPITAL

12. ACCOUNTS & NOTES PAYABLE
13. ACCRUED EXPENSES
10. PARTNERS' CAPITAL ACCOUNTS:
 - A) HERMAN KLEIN
 - B) MAX ROSEMAN
 - C) JOSEPH BUFFA
 - D) LEO CARLINO
 - E) JAMES SABELLA
- TOTAL PARTNERS' CAPITAL
19. TOTAL LIABILITIES & CAPITAL

MI
SH
FR

11 0
470 7
203 0
53 4
33 6
19 0
10 9

284 4
50 0
89 9
82 2
68 9
67 6
72 1
301 4

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| MAY 1, 1954 | | |
|-------------------------|-----------------------|-------------------|
| MISS SMART CROCKS | C & S DRESS Co. | TOTAL |
| 98.64 | 1 290.61 | 12 389.25 |
| 50.03 | 1 399.85 | 472 149.94 |
| 35.01 | 637.90 | 204 473.91 |
| 16.00 | 6 709.74 | |
| 11.01 | 1 580.52 | |
| 54.99 | 5 209.22 | 25 074.21 |
| 43.70 | 891.00 | 11 834.70 |
| | | <u>725 922.01</u> |

| | | |
|-------|----------|-------------------|
| 34.57 | - - | 284 434.57 |
| 54.91 | 3 426.22 | 54 033.13 |
| 77.20 | 1 500.09 | - - |
| 93.99 | 1 500.10 | - - |
| 93.98 | 1 000.06 | - - |
| 81.79 | 1 000.06 | - - |
| 56.98 | 1 000.06 | - - |
| 03.94 | 6 000.37 | 387 404.31 |
| | | <u>725 922.01</u> |

| APRIL 29, 1955 | | |
|-------------------------|-----------------------|-------------------|
| MISS SMART CROCKS | C & S DRESS Co. | TOTAL |
| 7 778.07 | 3 261.93 | 71 040.00 |
| 2 300.00 | 6 403.44 | 206 403.44 |
| - - | 1 990.92 | 1 990.92 |
| - - | 6 709.74 | |
| - - | 2 259.43 | |
| - - | 4 530.26 | 4 530.26 |
| 1-4 500.01 | 700.20 | 145 273.27 |
| | | <u>429 237.89</u> |

| | | |
|------------|----------|-------------------|
| - - | - - | - - |
| 23 459.33 | 6 003.50 | 30 362.83 |
| 118 742.03 | - - | - - |
| 114 004.50 | - - | - - |
| 86 352.41 | - - | - - |
| 79 759.04 | - - | - - |
| - - | - - | - - |
| 3 007.06 | - - | 398 875.06 |
| | | <u>429 237.89</u> |

Schedule J.—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

Page 4

| 1. Capital account at beginning of year | 2. Ordinary net income | 3. Capital gains and nontaxable income | 4. Additional capital contributed during year | 5. Capital losses, contributions, and other unallowable deductions | 6. Withdrawals | 7. Capital amount at end of year |
|---|------------------------|--|---|--|----------------|----------------------------------|
| \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| | | | SCHEDULE ATTACHED | | | |
| | | | | | | |

Schedule K.—PARTNERS' SHARES OF INCOME AND CREDITS. (See Instruction for Schedule K)

| 1. Name and address of each partner (Designate nonresident aliens, if any) Where return of partner or member is filed in another internal revenue district, specify district | 2. Percentage of time devoted to business | 3. Ordinary net income (item 25, page 1) less (a) net partially tax-exempt interest included in column 4 and (b) dividends included in column 5 | 4. Partially tax-exempt interest less amortization | 5. Qualifying Dividends | |
|--|---|---|--|---------------------------------|-------------------------------|
| | | | | (a) Rec'd prior to Aug. 1, 1954 | (b) Rec'd after July 31, 1954 |
| (a) | | \$ | \$ | \$ | \$ |
| (b) | | | | | |
| (c) | | | | | |
| (d) | | | | | |
| Totals | | \$ 311 594.62 | \$ | \$ | \$ |

Continuation of Schedule K

| 6. Net short-term gain (or loss) from sale or exchange of capital assets (item 25, page 1) | 7. Net long-term gain (or loss) from sale or exchange of capital assets (item 27, page 1) | 8. Charitable contributions (from Schedule G) | 9. Federal income tax paid at source on tax free covenant bonds | 10. Income and profits taxes paid to a foreign country or United States possession | 11. Net earnings in self-employment (from line 9, Schedule H, page 3) |
|--|---|---|---|--|---|
| (a) | \$ | \$ | \$ | \$ | \$ |
| (b) | | | | | |
| (c) | | | | | |
| (d) | | | | | |
| Totals | \$ | \$ | \$ | \$ | \$ 311 594.6 |

ADDITIONAL INFORMATION REQUIRED

| | |
|--|--|
| <p>1. Date of organization..... JAN. 1, 1952</p> <p>2. Principal business activity (See General Instruction J)..... MGFR. OF DRESSES</p> <p>3. Number of places of business..... TWO</p> <p>4. (a) Did you pay social security taxes for any employees for any quarter of 1954?..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 13-1667521</p> <p>(b) Enter your employer identification number, if any (See General Instruction K)..... 11-1683422</p> <p>5. (a) How many months in the year did you own this business?..... ALL</p> <p>(b) Did you own this business on December 31, 1954?..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(c) Was this a seasonal business which was closed for more than two months during the year?..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>6. The partnership books are in care of:..... TAXPAYER Located at:..... 501 7TH AVENUE, N.Y., N.Y.</p> <p>7. Nature of organization: (a) <input checked="" type="checkbox"/> a partnership (c) <input type="checkbox"/> a pool (b) <input type="checkbox"/> a corporation (d) <input type="checkbox"/> a joint venture (e) <input type="checkbox"/> other (specify).....</p> <p>8. Was a Form 1065 filed for the preceding year?..... <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," to which District Director's office was it sent?..... 3RD. N.Y.</p> <p>9. Check whether this return was prepared by the (a) <input type="checkbox"/> cash method (b) <input checked="" type="checkbox"/> accrual method, or (c) <input type="checkbox"/> other. If other method used, explain.....</p> | <p>10. Check method of inventorying material or merchandise: (a) <input type="checkbox"/> cost (b) <input checked="" type="checkbox"/> cost or market, whichever is lower (c) <input type="checkbox"/> last-in, first-out provided in section 472 (d) <input type="checkbox"/> other. If other method used, explain.....</p> <p>11. Is any member of the partnership the husband or wife, son, or daughter of any other member, or a trust for the benefit of any such person?..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>12. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company, as defined in section 542 of Internal Revenue Code?..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," list name and address of each such corporation and amount of stockholdings.....</p> <p>13. Was a return of information on Forms 1066 and 1067 filed for the calendar year 1954? (See General Instruction H)..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>14. Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act of 1951?..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If answer is "Yes," state the approximate aggregate gross dollar amount billed during the taxable year under all such contracts and/or subcontracts (See General Instruction I)..... \$</p> |
|--|--|

SCHEDULE A

U. S. TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

OFFICE OF REGIONAL COMMISSIONER

NORTH-ATLANTIC REGION

P. O. BOX 2954

NEW YORK, N. Y. 10008

IN REPLY REFER TO

Form L-21A

MAR 11 1966 Ap:NY:JAR:CL

Estate of Herman Klein, Deceased
 Bebe Klein, Malcolm Klein and
 Ira Klein, Executors, and
 Mrs. Bebe Klein, surviving wife
 c/o Mr. James E. Birdsall
 11 Broadway
 New York, New York 10004

Gentlemen and Madam:

| TAXABLE YEAR ENDED | DEFICIENCY |
|--------------------|-------------|
| December 31, 1955 | |
| Tax | \$48,594.11 |
| Fraud Penalty | |
| Section 6653(b) | 24,762.81 |
| December 31, 1956 | |
| Tax | \$14,224.40 |
| Fraud Penalty | |
| Section 6653(b) | 7,598.20 |
| December 31, 1957 | |
| Tax | \$11,234.48 |
| Fraud Penalty | |
| Section 6653(b) | 6,142.87 |
| December 31, 1958 | |
| Tax | \$ 7,062.26 |
| Fraud Penalty | |
| Section 6653(b) | 4,056.34 |

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability for the above-noted taxable year(s) discloses a deficiency (or deficiencies) in the amount(s) shown above. The attached statement shows the computation of the deficiency or deficiencies.

IF YOU AGREE to this determination, please sign the enclosed agreement, Form 870, and return it promptly to this office. An addressed envelope is enclosed for this purpose. The signing and filing of this agreement will permit an early assessment of the deficiency or deficiencies and will limit the accumulation of interest.

IF YOU DO NOT AGREE, and do not sign and return the enclosed form, the deficiency or deficiencies will be assessed for collection, as required by law, upon the expiration of ninety days from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules, a copy of which may be obtained by writing to its Clerk, Box 70, Washington, D. C. 20044.

Very truly yours,

SHELDON S. COHEN

Commissioner

By

(Signed) Charles M. Wilcox

Associate Chief,
Appellate Branch Office

Enclosures -
 Statement
 Agreement, Form 870
 Addressed envelope

ONLY COPY AVAILABLE

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AP:NY:JAR:CL

STATEMENT

Estate of Herman Klein, Deceased
Bebe Klein, Malcolm Klein and
Ira Klein, Executors and
Mrs. Bebe Klein, surviving wife
c/o Mr. James E. Birdsall
11 Broadway
New York, New York 10004

| <u>Taxable Year Ended</u> | <u>INCOME TAX</u> | |
|---------------------------|-------------------|------------------------------------|
| | <u>Deficiency</u> | <u>Penalty Section 6653(b)</u> |
| December 31, 1955 | \$43,594.11 | \$24,762.31 |
| December 31, 1956 | 14,224.40 | 7,598.20 |
| December 31, 1957 | 11,234.43 | 6,142.87 |
| December 31, 1958 | <u>7,062.26</u> | <u>4,056.34</u> |
| Totals | \$81,115.25 | \$42,560.22 |

It is determined that your income tax for each of the years 1955, 1956, 1957 and 1958 was underpaid and that at least a part of the underpayment for each year of the tax required to be shown on your return was due to fraud; therefore, there is added to the tax an amount equal to 50% of the underpayment of each year in accordance with the provisions of Section 6653(b) of the Internal Revenue Code of 1954.

A copy of this letter and statement has been mailed to your representative, Mr. James E. Birdsall, 11 Broadway, New York, New York 10004, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1955

ADJUSTMENTS TO INCOME

| | | |
|---|---------------|------------------|
| Taxable income as disclosed by return | | \$80,499.29 |
| Unallowable deductions and additional income: | | |
| (a) Dividend income | \$21,994.29 | |
| (b) Other income | 5,200.00 | |
| (c) Partnership income | 39,492.78 | |
| (d) Interest income | 43.23 | |
| (e) Contributions | <u>165.31</u> | <u>65,895.53</u> |
| Taxable income as corrected | | \$147,394.92 |

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Estate of Herman Klein, Deceased and
Mrs. Bebe Klein, surviving wife

Statement

Taxable Year Ended December 31, 1953

EXPLANATION OF ADJUSTMENTS

(a) It is determined that you received dividend income taxable to you under the provisions of Section 61(a) of the Internal Revenue Code of 1954, from Miss Smart Frocks Inc., which you failed to report on your returns as follows:

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
| 1953 | \$21,994.29 |
| 1956 | 21,662.65 |
| 1957 | 16,394.59 |
| 1958 | 12,291.78 |

You have previously indicated your agreement to \$1,950.00 of the above amounts for each of the years 1956 and 1957 and to \$2,250.00 for the year 1958.

(b) It is determined that you received other income taxable to you under the provision of Section 61(a) of the Internal Revenue Code of 1954, from Lady Smart Inc. which you failed to report on your returns as follows:

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
| 1953 | \$5,200.00 |
| 1956 | 3,200.00 |
| 1957 | 5,200.00 |
| 1958 | 2,300.00 |

(c) On your return for the year 1953 you reported partnership income of \$90,843.69 from the partnership of Miss Smart Frocks. It is determined that your income from this partnership which was filed as Miss Smart Frocks and C & S Dress Co. for the taxable year ended April 29, 1955 was understated in the amount of \$39,492.73 of which the amount of \$1,200.00 was previously agreed by you. Your proportionate share of \$110,338.67 of corrected partnership income (\$90,843.69 plus \$39,492.73) was arrived at as follows:

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Estate of Herman Klein, Deceased and
Mrs. Bebe Klein, surviving wife

Statement

Taxable Year Ended December 31, 1955

EXPLANATION OF ADJUSTMENTS (Continued)

(c) Continued

| | | |
|---|-------------|--------------|
| Ordinary net income per return | | \$311,594.62 |
| Additional income and unallowable deductions: | | |
| (1) Cost of goods sold | \$80,189.00 | |
| (2) Travel and entertainment | 27,243.47 | |
| (3) Supplies, services and sundries | 3,148.04 | |
| (4) Reserve for Bad Debts | 11,583.88 | |
| (5) Bonus and Christmas expense | 1,500.00 | |
| (6) Auto expense | 3,222.13 | |
| (7) Auto depreciation | 1,509.03 | |
| (8) Insurance | 980.38 | 129,975.95 |
| Total partnership income | | \$441,570.57 |
| Less: Total salaries and expense allowances | | 89,273.00 |
| Partnership ordinary income | | \$352,295.57 |
| Mr. H. Klein's 30% share of ordinary income | | \$105,688.67 |
| Mr. H. Klein's salary | | 17,550.00 |
| Mr. H. Klein's expense allowance | | 7,100.00 |
| Mr. H. Klein's corrected partnership income | | \$130,338.67 |

The partnership previously indicated its agreement to disallowance of \$4,000.00 travel and entertainment expenses by execution and submission of an agreement form 875.

The partnership adjustments are explained as follows:

(1) Cost of goods sold is decreased in the amount of \$80,189.00 as a result of disallowance of a write-down in the partnership inventory of that amount, as of April 29, 1955, which write-down has not been substantiated.

(2) Travel and entertainment expenses in the amount of \$27,243.47 have been disallowed for lack of substantiation that the expenditures were ordinary and necessary business expenses in accordance with the provisions of section 162 of the Internal Revenue Code of 1954; \$4,000.00 of this disallowance has previously been agreed, as stated supra.

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Estate of Herman Klein, Deceased and
Mrs. Bebe Klein, surviving wife

Statement

Taxable Year Ended December 31, 1955

EXPLANATION OF ADJUSTMENTS (Continued)(c) Continued

Explanation of Partnership Adjustments (Continued)

(3) Supplies, Services and Sundries have been disallowed in the amount of \$3,148.04 for lack of substantiation that expenditures in this amount represent ordinary and necessary business expenses in accordance with provisions of section 162 of the Internal Revenue Code of 1954.

(4) A credit balance in the reserve for bad debts in the amount of \$11,583.88 is determined to be taxable income to the partnership.

(5) Bonus and Christmas expense in the amount of \$1,500.00 is disallowed for lack of substantiation.

(6, 7, and 8) Auto expenses of \$3,222.15, Auto depreciation of \$5,109.03 and auto insurance in the amount of \$980.30 is disallowed as personal expenses.

(d) It is determined that interest income taxable to you under the provisions of Section 61(a) of the Internal Revenue Code of 1954 was understated as follows:

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
| 1955 | \$ 43.25 |
| 1956 | 21.42 |
| 1957 | 124.70 |

(e) Deductions for charitable contributions have been disallowed in accordance with the provisions of Section 170 of the Internal Revenue Code of 1954 for lack of substantiation, as follows:

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
| 1955 | \$350.00 |
| 1956 | 800.00 |
| 1957 | 900.00 |
| 1958 | 800.00 |

Estate of Herman Klein, Deceased and
Mrs. Bebe Klein, surviving wife

Statement

Taxable Year Ended December 31, 1955

EXPLANATION OF ADJUSTMENTS (Continued)

(c) Continued

You have previously indicated your agreement to disallowance of \$150.00 of the above amounts for each of the years 1955 and 1956 and \$250.00 for the year 1957. You are also allowed your proportionate share of partnership contributions from Miss Smart Frocks and C. & S. Dress Company in the year 1955 in the amount of \$684.69.

COMPUTATION OF INCOME TAX

| | | |
|---|---------------|------------------|
| Taxable income as corrected | | \$147,394.92 |
| Combined normal tax and surtax - joint return | | \$ 90,229.89 |
| Less: Dividends received credit - | | |
| 4% of \$21,994.29 | | <u>879.77</u> |
| Income tax | | \$ 89,350.12 |
| Add: Self-employment tax | | <u>126.00</u> |
| Income tax liability as corrected | | \$ 89,476.12 |
| Income tax liability disclosed by return | \$39,950.51 | |
| Additional assessment, 9/6/57, | | |
| account No. 509530 | <u>931.50</u> | <u>40,802.01</u> |
| Deficiency | | \$ 48,594.11 |
| Fraud Penalty - Section 6653(b) - | | |
| 50% of \$49,523.61 | | \$ 24,762.81 |

[3] MR. ROSS: Yes, Your Honor. At this time I'd like to submit the Stipulation of Facts with the Exhibits 1-A and 2-B.

* * * *

[4] Now, as far as the first two conditions, the parties in the stipulation, at item 10, have agreed that the petitioner, Bebe Klein, meets those two conditions. Item 10 of the stipulation reads, "The parties agree that Bebe Klein meets the requirements of Internal Revenue Code of 1954, Section 6013-E (1) B and C." So then, the only issue with respect to the innocent spouse defense that we are involved in, is found in Section 6013-E (1) A; and E (1) A is the provision which says that the omission must exceed 25% of the gross income stated in the return.

* * * *

[11] MR. ROSS: Yes, Your Honor. As Mr. Levinson has indicated, the respondent -- or the parties have agreed that the requirements of Section 6013-E (1) B and C had been met, and therefore, the only thing we're left with is Section 6013-E (1) A, which deals with the 25% omission. In order to meet the requirements of -- and by the way, all my references to Code Sections are to the Internal Revenue Code of 1954 -- in order to meet requirements of 6013-E (1) A, there must have been

omitted from gross income an amount properly includable therein, which is attributable to one spouse and which is in excess of 25% of the amount of gross income stated in the return.

[12] Now, although we haven't stipulated -- put it in the stipulation, respondent concedes at this time that all items of omitted income on the petitioner, that are included in the stipulation, are attributable to Herman Klein.

* * * *